

B. 360.



Dr. Strousberg.



J. rel.

189-2

Griffith

LAW AND EQUITY

BANKRUPTCY

IN EQUITY

STATUTES, ORDERS AND FORMS

AS AMENDED TO THE PRESENT DATE

MA. ARCHER, LONDON

BY WILLIAM DOWNING, ESQ.,

OF THE MIDDLE TEMPLE, ESQ.

AND CHARLES ARTHUR HOLMES, ESQ.,

OF THE MIDDLE TEMPLE, ESQ.

IN TWO VOLUMES

VOL. II

LONDON

W. SWEET, A. CHAMBERLAIN, LANC.

STREET, AND JOHN DE WILKINSON

20, BROADWAY, LONDON

1882

1882

THE
LAW AND PRACTICE
IN
BANKRUPTCY;

WITH
An Appendix
OF
STATUTES, ORDERS AND FORMS.

PARTLY FOUNDED ON THE ELEVENTH EDITION

OF

MR. ARCHBOLD'S TREATISE.

By WILLIAM DOWNES GRIFFITH, Esq.,

H. M. ATTORNEY-GENERAL, CAPETOWN.

ASSISTED BY CHARLES ARBUTHNOT HOLMES, Esq.,

BARRISTER-AT-LAW.

IN TWO VOLUMES.

VOL. II.

LONDON:

H. SWEET, 3, CHANCERY LANE,
STEVENS AND SONS, 26, BELL YARD.

Law Booksellers and Publishers,

HODGES, SMITH & CO., GRAFTON ST., DUBLIN.

1867.

THE
LAW AND PRACTICE
OF
BANKRUPTCY:

WITH
AN APPENDIX
OF
STATUTES, ORDERS AND FORMS

LASTLY REVISED BY THE FIFTEENTH EDITION

BY ARCHIBALD A. AITKEN



IN TWO VOLUMES

VOL. II

LONDON:

PRINTED BY C. ROWORTH AND SONS,
BELL YARD, TEMPLE BAR.

CHAPTER XII.

PRACTICE ON INTERLOCUTORY APPLICATIONS.

CHAP. XII.

By General Order of 19th October, 1852, rule 17 (unless the court shall in any particular case otherwise direct), all applications to the court in the exercise of its primary jurisdiction, by virtue of "The Bankrupt Law Consolidation Act, 1849," shall be by way of motion, supported by affidavit, upon hearing which the court shall make such order therein as shall be just; but in cases in which any other party or parties than the applicant are to be affected by such order, no such order shall be made unless upon the consent of such person or persons, duly shown to the court; or upon proof that notice of the intended motion and copy of the affidavit in support thereof has been served upon the party or parties to be affected thereby, four clear days at least before the day named in such notice as the day when the motion is to be made: provided, however, that the court may, if it shall think fit, in any case where the party or parties to be affected by the order, or any of them, shall not have been duly served with a notice of the motion for such order, make an order calling upon the party or parties to be affected thereby to show cause, at a day to be named by the court in such order, why such order should not be made; and by rule 18, every order to show cause shall be served upon the party or parties to be affected thereby four clear days at the least before the day appointed for showing cause; but, notwithstanding this general rule, when the subject-matter is of a complicated nature, or involve a long statement of facts, applications to the court are made on petition, also applications to the commissioner to annul adjudication after advertisement; when made by any one other than the bankrupt, or by him, on grounds not going to the original invalidity of the adjudication. So, also, applications by an equitable mortgagee, for a sale of the mortgaged premises, are usually made by petition.

Applications to court how made.

Court may make order nisi.

Serving order nisi.

Petitions.

By rule 20, in cases in which personal service of any notice of motion, or of any rule or order of the court, is required, the same

Service of notice of motion or of rule.

CHAP. XII.

shall be effected, in the case of a notice of motion, by delivering to the party or parties to be served, and each of them, a duplicate of the notice of motion; and in the case of a rule or order, by delivering to the party or parties to be served, and each of them, a true copy of the order or rule, at the same time showing to him or them the original order or rule of the court.

Petition not needed to remove assignee.

A petition to remove a bankrupt assignee was even under the old law unnecessary, as this might be done upon mere application to the commissioner (a).

Appeal formerly by petition usually;

now by motion.

No new evidence on appeal, except by leave, unless of what took place in court.

Order on petition could not be discharged on motion.

Before the Act of 1861 the usual form of appeal was by petition, but now, under the 32nd rule of the General Order of the 12th of October, 1861, all appeals to the Court of Appeal are directed to be by motion; and, by sect. 66 of the act, appeals from county courts in bankruptcy are subject to the rule. No evidence is allowed to be used on the appeal, which was not before the court below, without special leave of the appellate court, with the exception of evidence when required, of what took place in court on the hearing of the matter before the commissioner or county court judge (b). Formerly, an order, obtained on petition, could not be discharged on motion (c); and this rule will probably still govern the practice where there is a new substantive application to discharge the former order, on grounds of its having been wrongfully obtained, by fraud or the like, or on new evidence, discovered not on the grounds that the order was itself erroneous. On the evidence before the court an application to this effect would, of course, be an appeal, and would be therefore subject to the rules just mentioned, regulating appeals. Thus, an application by a creditor to annul an adjudication, on grounds other than for legal invalidity, must be by petition still (d).

Application to annul on grounds other than legal invalidity by petition.

Amending certificate of taxation of costs, except for error patent, formerly by petition.

Nonpayment of sum disputed, no objection to application.

Formerly, if a party sought to amend the report or certificate of taxation of costs, he must present a petition; but if the objection insisted on were manifest upon the face of the report or certificate, or if the objectionable items were set forth in the affidavit in support (e), the court would, on motion, direct the officer to review the taxation (f); and the nonpayment of the costs as taxed was not a preliminary objection to the motion.

There seems no reason to suppose this rule of practice has been changed, save that, following the analogy of the 17th rule above

(a) *Ex parte Watts*, 1 Rose, 436.

(b) *Ex parte Page, Re Neal*, 1 De G., J. & S. 283; 32 L. J., Bcy. 14; *Ex parte Miller*, Ib. 45.

(c) *Re Walker*, 1 Dea. 88; 2 M. & Ay. 267.

(d) *Ex parte Austin, Re Bianconi*, 12 W. R. 177; 9 L. T., N. S. 492.

(e) *Ex parte Lewis*, 3 M., D. & D. 173.

(f) *Ex parte Richardson*, 1 Mon. & A. 377; 3 D. & Ch. 735.

set out of the Orders of 19th October, 1852, the court would, probably, in almost every case, entertain the application on motion. The case does not fall directly within that rule, as the application is not to the court in its primary jurisdiction, being an appeal from the taxing master; nor does it fall within the terms of the 32nd rule of the Orders of the 12th October, 1861, which only regulates appeals to the Court of Appeal.

CHAP. XII.

Probably now by motion.

A motion may be made, or a petition presented by the bankrupt, his assignees or any of the creditors, whether they have proved or not (*g*). Even a stranger may petition if he be materially interested in the subject of the petition, and the petition concern the bankruptcy; as, for instance, a person who has purchased some of the bankrupt's property from the assignees at a sale, and paid the deposit upon it, may petition to have that deposit returned to him, upon the fiat being annulled (*h*); but the official assignee has not an interest sufficient to entitle him to petition, except under very special circumstances (*i*).

Stranger may petition if interested.

Official assignee should have special case to entitle him to petition alone.

But the court has refused to institute inquiries into the conduct of the assignees and the solicitor, upon the petition of the bankrupt, unsupported by any of the creditors, where he had no pecuniary interest in the event: such an application should be made by some one interested in the estate, and capable of paying costs (*k*).

Bankrupt alone will not be encouraged in applications as to estate or as to conduct of assignees.

The bankrupt may petition *in formâ pauperis* (*l*).

Bankrupt may petition *in formâ pauperis*.

Where a creditor has given notice to dispute the bankruptcy, in an action pending against him by the assignees, he cannot petition against them in their character of assignees (*m*).

Creditor disputing adjudication cannot petition against assignees as such.

As to the parties to petition to annul, see *Annulling, post*.

The question as to the time during which an appeal may be brought, and the limitations upon a bankrupt seeking to annul his bankruptcy are elsewhere considered; with these exceptions, there is no time actually limited for petitioning; a petition may be presented in a case of bankruptcy, even after the fiat has been annulled (*n*). The only general rule upon the subject is, that a petition must be presented without any unnecessary delay.

Time for petitioning.

The Petition.—The petition is intitled in the bankruptcy, and is addressed, "To the Honorable Mr. Commissioner [Holroyd]." Form and contents of petition.

(*g*) See *Bailey v. Vincent*, 5 Mad. 48; *Ex parte Dodson*, Buck, 225.

(*h*) *Ex parte Fector*, Buck, 428; see *Ex parte Wiggins*, M. & B. 168.

(*i*) *Anon.*, 1 Dea. 106.

(*k*) *Ex parte Harrison*, Buck, 246.

(*l*) *Ex parte Northam*, 2 V. & B. 124.

(*m*) *Ex parte Hall*, 2 Dea. 263; and see *Like v. Howe*, 6 Esp. 20.

(*n*) *Ex parte Fector*, Buck, 428.

CHAP. XII.

It states the issuing of the fiat or the filing of the petition for adjudication, and such of the proceedings as may be necessary. It must then state, with certainty and precision, all the facts and circumstances upon which the prayer is founded. And lastly follows the prayer, which must state specially what the petitioner requires, and then this general clause is usually added, "or that your Honor [*or Lordships*] will please to make such other order in the premises as to your Honor [*or Lordships*] shall seem meet."

Petition, how intitled.

The petition must be correctly intitled in the bankruptcy. And therefore, where there were a separate and a joint commission, it was held that no order could be made upon a petition to supersede the separate commission intitled in the joint commission only; and where a joint fiat issued against A. & B., and B. only was found bankrupt, a petition to annul the fiat must be intitled "In the matter of A. & B."(*o*). The court, however, will allow the petition to stand over, with liberty to amend the title (*p*). But if the petition is intitled "In the matter of A. & B., against whom a fiat hath issued," it is sufficient; and its being intitled "in Chancery" will not vitiate it (*q*). Parties having adverse interests should not join in petitioning (*r*); so the assignees should not join an execution creditor in a petition to annul the bankruptcy (*s*).

What parties may and may not join in petition.

In an application by the survivor of two persons, against whom a petition for a joint adjudication had been presented, to annul the adjudication or dismiss the petition, the personal representative of the deceased should join (*t*), if consenting, and if not, he should be served. Indeed, as a general rule, every one who is to be affected by the order prayed ought to be served; so it has been held, that a petition of an equitable mortgagee should bring before the court all parties with whom the bankrupt has deposited deeds relating to the same property (*u*); although the court has no right to make any order against them, in the nature of sale or foreclosure, unless with their consent, or on their submission.

All affected by order prayed, to be served.

Petition should show petitioner's interest;

The petition should show clearly that the petitioner is interested in the matter of the petition; as, in a bankrupt's petition to expunge a debt, the petition must state that the expunging would affect the bankrupt's interest in the surplus or the amount of his allowance (*x*); and in general it has been held, that where the petition is an appeal from the decision of the commissioner, it must

and reasons of

- | | |
|--|--|
| (<i>o</i>) <i>Ex parte Fisher</i> , 3 Dea. 695. | (<i>t</i>) <i>Re Steel</i> , M. & Ch. 73. |
| (<i>p</i>) <i>Ex parte Mills</i> , Buck, 230. | (<i>u</i>) <i>Ex parte Burt</i> , 1 M., D. & D. 191. |
| (<i>q</i>) <i>Ex parte Hudson</i> , 2 Glyn & J. 228. | (<i>x</i>) <i>Ex parte Pitchforth</i> , 3 Dea. 487 ; |
| (<i>r</i>) <i>In re Gibson</i> , 1 Glyn & J. 303. | M. & Ch. 96 ; <i>Ex parte Fairman</i> , 3 Dea. |
| (<i>s</i>) <i>Ex parte Wilks</i> , 2 Dea. 1 ; 2 Mon. | 467 ; M. & Ch. 125. |
| & A. 667. | |

CHAP. XII.

state not only the facts and circumstances which were laid before the commissioner, and the commissioner's decision, but also the grounds or reasons for the decision, as given by the commissioner (*y*). So, also, a petition by a creditor to annul should state that the petitioner is a creditor, although it has been held sufficient if it appear in the petition or affidavit (*z*).

commissioner's decision, when appealed from.

The statement should contain all the facts and circumstances necessary to enable the court to decide whether the prayer of the petition should be granted or not. Where a creditor presented a petition to stay payment of dividends, and obtained an ex parte order to stay the dividend, but in the petition and affidavit suppressed the fact of a sufficient fund being reserved to answer the dividends on his claim, this suppression of a material fact disentitled the petitioner to any relief on his petition (*a*).

What the petition should contain.

It is not sufficient that the facts, upon which the prayer of the petition is founded, be sworn to in the affidavit; for if they are not alleged by the petition, it may be dismissed (*b*): the affidavits must be in support of the allegations in the petition, they are not to supply the want of allegation (*c*).

But the course which the court would most probably take in such a case at the present day would be, to allow the petition to stand over, with leave to amend; at the cost, however, of the petitioner. The statement also should not contain different and distinct cases; you cannot, for instance, in the same petition pray for distinct orders under several bankruptcies (*d*). So, a petition to expunge the proofs of various creditors (*e*), or by several creditors to prove distinct debts (*f*), will be dismissed as multifarious; but a petition of several creditors to prove, and for a removal of the assignees, is not multifarious, the removal of the assignees being a common object (*g*); and where the petition was by several creditors, and prayed to expunge proofs admitted, to admit proofs which had been rejected, and to remove the assignees, it was held not multifarious, as the removal of assignees was a common object, and the rest might be considered surplusage; but the removal of the assignees being refused, the petition then became multifarious, and was dismissed (*h*). But a petition may be framed in the

Practice as to amending.

Petition not to be multifarious.

May be framed in alternative.

(*y*) *Ex parte Schmaling*, Buck, 94; *Ex parte Curtis*, 1 Rose, 274; *Ex parte Baker*, Mon. & C. 156; 4 Dea. 55; *Ex parte Worth*, 2 D. & Ch. 4; *Ex parte Mudie*, 2 M., D. & D. 490.

(*z*) *Ex parte Wyatt*, 1 Mon. & A. 406; *Ex parte Robinson*, 1 Mon. & A. 705.

(*a*) *Ex parte Davidson*, 2 M., D. & D. 375.

(*b*) *Ex parte Paramon*, 1 Dea. 279.

(*c*) *Ex parte Wyatt*, 1 M. & Ay. 405.

(*d*) *Ex parte Wilson*, 18 Ves. 439.

(*e*) *Ex parte Coles*, Buck, 256.

(*f*) *Ex parte Saer*, Mon. & M'A. 280.

(*g*) *Ex parte Bousfield*, Mon. 128; *Ex parte Howell*, Mon. 129.

(*h*) *Ex parte Grazebrook*, 2 D. & Ch. 186.

CHAP. XII.

alternative,—either for annulling the fiat, or a removal and new choice of assignees,—or the like; and it is only under special circumstances that the court will call upon the petitioner to elect (*i*): but where the petition prayed that a fiat, issued pending an existing commission, might be superseded, and also for a new choice of assignees under the commission, it was held multifarious, the choice of assignees being irrelevant to the point between the petitioners and respondents parties to the fiat (*k*). So, also, a petition of a creditor to remove assignees for collusion with the bankrupt, and for taxation of the solicitor's bill (*l*). A petition to remove an assignee on the ground of poverty, and to inquire into the proof of his and other debts, is not multifarious: and if the petition also prays that the debts may be expunged, that is surplusage merely (*m*). A petition to tax the messenger's bill and the solicitor's bill up to the choice of assignees is not multifarious (*n*); and the objection of multifariousness is not conclusive, the court not being bound to dismiss the petition; the court can retain the petition as to one object of the prayer, and dismiss as to another (*o*); and the statement must not be irrelevant to the relief sought, otherwise it may be referred for impertinence (*p*); which, if manifest on the face of the petition, the latter may be dismissed with costs (*q*).

Multifariousness, what; what not.

Statement not to be irrelevant to prayer.

Should contain specific allegations.

It should allege specifically all that is material to the petitioner's case, and not merely leave it to be inferred. So, on a petition to retax a solicitor's bill, the court cannot order that the solicitor shall refund what has been overpaid, unless the petition states that he has been actually paid (*r*); so a petition of appeal against the allowance of the certificate by the commissioner upon the ground that the bankrupt had admitted he had lost 25*l.* by gaming at one sitting is demurrable; it should allege the fact positively, and that the money was lost in one day (*s*).

Prayer to be specific.

The prayer should state specifically what is required by the petitioner, and that relief only should be prayed for, which the court usually grants in similar cases; so a petition for leave to except, must state the exceptions (*t*). So, also, a notice of motion to rescind an order for irregularity, must state the irregularity com-

(*i*) *Ex parte Scholey*, Buck, 476; *Ex parte Burgess*, 1 Jac. 559.

(*k*) *Ex parte Devas*, 4 D. & Ch. 366; 1 Mon. & A. 420.

(*l*) *Ex parte Knight*, 2 Dea. 215; 3 Mon. & A. 58.

(*m*) *Ex parte Copeland*, 3 D. & Ch. 561.

(*n*) *Ex parte Pring*, 3 Dea. 322; 3 Mon. & A. 607.

(*o*) *Ex parte Brown*, 3 D. & Ch. 496; *Ex parte Knight*, 3 Mon. & A. 58.

(*p*) *Ex parte Cunningham*, Mon. & M'A. 193.

(*q*) *Ex parte Hinton*, Mon. & M'A. 207.

(*r*) *Ex parte Ainsworth*, 1 M., D. & D. 226.

(*s*) *Ex parte Crouch*, 3 D. & Ch. 17.

(*t*) *Ex parte Cox*, 3 D. & Ch. 11.

plained of (*u*); but if on the hearing of the petition the prayer is not for the relief consequential on the case made, the court will allow the prayer to be amended *instanter*, so as not to delay the hearing (*x*).

CHAP. XII.

Practice as to amending *instanter*.

While appeals were by petition, it was held that the petition must contain not only the facts and circumstances which were laid before the commissioner, but also the grounds or reasons for the decision as given by the commissioner (*y*). It should pray only what was asked from the commissioner, otherwise it would not be an appeal, and therefore it has been held that a creditor's petition for leave to prove a greater sum than he offered to prove before the commissioner, ought to be dismissed (*z*). If a petition contain improper and unjustifiable charges, the petitioner will be ordered to pay all the costs, though he may succeed as to part of his petition (*a*).

Prayer of petition of appeal not to be wider than of original petition.

Costs in case of improper charges.

Although most of the preceding cases were decided as to petitions, the principles of the cases apply equally to motions, except that on a motion there is, of course, no statement on the face of the proceeding, the case being made on the affidavits; the remarks, therefore, as to the statements in the petition, will, for the most part, apply to the affidavits on a motion, except where, from the very nature of the two forms of procedure, they are applicable.

Same principles apply, and affidavits on motions.

Signing and attesting of Petition.]—By General Order, 19th October, 1852, rule 21, except where otherwise provided or required by the statute, or by these rules, every petition presented to the Court of Bankruptcy in London or in the country shall be signed by the petitioner or petitioners: provided always, that in the case of partnership or absence of any petitioner or petitioners from the United Kingdom, the signature of one of the partners, or of the party presenting the same on behalf of the person so absent, shall be sufficient, and the signature of each person signing the same shall be attested by the solicitor actually presenting the petition, or by some other solicitor, who shall state himself in his attestation to be the solicitor or agent of the solicitor of the party signing in the matter of the petition.

Petition to be signed by petitioner;

and attested by solicitor presenting petition.

Form of attestation.

This is the same as Ord. Eldon, 12th August, 1809; the decisions under which will be applicable to this order.

It will not be dispensed with unless under very special circumstances, verified by affidavit (*b*). Under particular circumstances,

Rule, when only dispensed with.

(*u*) *Re Walker*, 1 Dea. 88; 2 M. & Ay. 267.

(*x*) *Ex parte Cocks*, 2 Dea. 14.

(*y*) See ante, 740.

(*z*) *Ex parte Fry*, 3 Mad. 132.

(*a*) *Ex parte Norton*, De G. 504.

(*b*) *Anon.*, 1 Rose, 97.

CHAP. XII.

the court has allowed an agent in town to sign a petition for his principal in the country, the agent undertaking to be answerable for the costs (*c*). If the petitioner reside in Scotland (*d*), or in Ireland (*e*), the petition must be signed by the petitioner and not by an agent. A petition by several assignees must be signed by them all; they do not come within the meaning of the clause in the above order relating to partners (*f*); but the petition may be heard, if the other assignees have been served (*g*), or as the petition of those only who have signed (*h*); and if the petition is presented by two assignees on behalf of themselves and a third assignee, the signature of the two actually presenting the petition is sufficient (*i*). It was held in one case that the order was sufficiently complied with, by the signature of the petitioner being "authenticated," not "attested," by his solicitor, who had not witnessed the signing, but put his name to it from a knowledge of the petitioner's handwriting; the object of the order being to secure the responsibility of a solicitor to the propriety of the application (*k*), and not as a security for costs (*l*): and where the petition was "attested" by the solicitor's agent, and "authenticated" by the solicitor, it was held sufficient (*m*). But it has since been held that the attestation must be to the signature of the petitioner and not to the petition (*n*); it is not a sufficient compliance with the above order, that the petitioner's signature be "authenticated" by his solicitor, it must be "attested" (*o*). But "I attest this to be the signature of" the petitioner, was held to be a sufficient compliance with the order (*p*). Where the petition was attested by the agent of the solicitor, it was dismissed with costs (*q*). Where the person attesting the petitioner's signature described himself as "his solicitor," and not as his solicitor or agent "in the matter of the petition," the attestation was held bad (*r*). "Witness, J. L., solicitor for the petitioner," signed by the country attorney, and presented by his town agent, was held bad (*s*). But where the petition was actually attested by the solicitor, although he was not

"Authentication" of petition, or of petitioner's signature, by solicitor, not sufficient.

Petitioner's signature must be attested.

What attestation sufficient.

(*c*) *Re Boldero*, 1 Rose, 231; *Ex parte Stone*, Buck, 255.

(*d*) *Ex parte Paul*, Mon. 252.

(*e*) *Ex parte Cumming*, Mon. 206.

(*f*) *Ex parte Morgan*, Buck, 109; *Ex parte White*, 3 D. & Ch. 366.

(*g*) *Ex parte Brereton*, 3 M., D. & D. 614.

(*h*) *Ex parte Burn*, 1 Dea. 194; 2 Mon. & A. 483.

(*i*) *Ex parte Chester*, Mon. & M'A. 435.

(*k*) *Ex parte Titley*, 2 Rose, 83.

(*l*) *Ex parte Cadby*, Mon. 352.

(*m*) *Ex parte Bellott*, 2 Mad. 259.

(*n*) *Ex parte Cracklow*, Mon. 353.

(*o*) *Ex parte Bury*, Buck, 394; *Ex parte Dumbell*, 2 Glyn & J. 121.

(*p*) *Ex parte Caldecott*, Mon. & M'A. 433.

(*q*) *Ex parte Hirst*, 1 Glyn & J. 76; *Ex parte Weston*, 1 Mad. 75.

(*r*) *Ex parte Wilkinson*, 1 Glyn & J. 353; *Ex parte Clapham*, Mon. & M'A. 51.

(*s*) *Ex parte Rose*, 1 D. & Ch. 554.

described as such,—as where it purported to be signed “in the presence of T. L., Master Extraordinary in Chancery,”—the court, on payment by the petitioner of the costs of the day, allowed it to stand over for the purpose of amendment, and of an affidavit being filed, showing that T. L., at the time of the signature, was the petitioner’s solicitor or agent (*t*). It is no objection, however, that the solicitor, who attests a petition, is a prisoner (*u*), or that the official assignee has signed it, his signature being mere surplusage (*x*). Nor is an attestation at all necessary, where the solicitor presents a petition on behalf of himself only (*y*); but then it must appear upon the face of the petition that the petitioner is a solicitor (*z*); neither is an attestation necessary where the bankrupt himself presents a petition, and appears in person to support it (*a*). An insufficient attestation is not waived by filing affidavits in answer (*b*); but it is too late to object to the attestation when an order has been made (*c*). And the court inclines against allowing an objection to the attestation (*d*), and will in some cases allow an attestation to be amended on the hearing of the petition (*e*); and, where the parties are numerous, will allow the petition to be heard, if signed by one only (*f*). And where the petitioner lives so far from town, that the object of the petition would be defeated if it were sent down for signature, the court will order the solicitor to sign on his behalf (*g*). Where the petitioners resided in Scotland, the court ordered the petition to be received with the signature of their London agent only (*h*); but a similar order, in a case where the petitioner was abroad, was discharged with costs, as the General Order enabled the agent so to sign (*i*). If the petition is that of a marksman, the attestation should state that the petition has been read over to him. Where this was not stated in the attestation, but the petitioner’s affidavit, being an echo of the petition, was stated in the jurat to have been read to him, it was held sufficient (*k*). And in a recent case the court refused to attend to the objection of want of signature to a petition,

Petition of solicitor in person needs no attestation.

So, of bankrupt appearing personally in support.

Petition of several may be heard, though signed by one only.

Attestation to marksman’s petition.

(*t*) *Ex parte Rawlinson*, 1 Glyn & J. 19.

(*u*) *Ex parte Thompson*, 1 Glyn & J. 308.

(*x*) *Ex parte Belcher*, 2 D. & Ch. 587.

(*y*) *Ex parte Kingdon*, 1 Mad. 446.

(*z*) *Ex parte Cole*, 2 Glyn & J. 269; *Ex parte Barrow*, Mon. 92.

(*a*) *Ex parte Bruce*, 4 Russ. 223.

(*b*) *Ex parte Hutchinson*, Mon. 130.

(*c*) *Ex parte Tanner*, 2 D. & Ch. 563; Mon. & B. 390.

(*d*) *Ex parte White*, 3 D. & Ch. 366.

(*e*) *Ex parte Wiggins*, Mon. 516; *Ex parte Tanner*, supra.

(*f*) *Ex parte Vines*, Mon. 516; Anon., 1b. 517.

(*g*) *Ex parte Craddock*, 1 D. & Ch. 487; *Ex parte Alexander*, 1 D. & Ch. 532; *Ex parte Helsby*, Mon. & B. 265.

(*h*) *In re Topling*, 3 M., D. & D. 93.

(*i*) *Ex parte Moore*, 2 D. & Ch. 369.

(*k*) *Ex parte Washbrook*, 2 M., D. & D. 490; 6 Jur. 156.

CHAP. XII.

as there was no affidavit of the fact before the court, and no notice had been given to produce the petition in court (*l*).

What amendments of proceedings allowable:

and on what terms.

Amendment of Proceedings.—By General Order, 19th October, 1852, rule 30, the court, in any proceeding before it, may, if it think fit to do so, allow amendments in any particular or particulars which, in the judgment of the court, are not material to the merits of the case, to be forthwith made on such terms as to reswearing (in the case of affidavits when necessary), and as to the payment of costs, or both as to payment of costs and postponement, or otherwise, as the court shall think reasonable.

So if there be any defect in a petition, which may be remedied by amendment, the court will in general on motion let the case stand over, and allow the petition to be amended; usually upon payment of the costs of the motion (*m*), and, if the petition has been called on, of the costs of the day (*n*). Sometimes such costs are ordered to abide the result of the hearing (*o*).

Engrossment and filing of petition.

Presenting Petition.—The petition should be engrossed upon plain paper, &c., and left at the registrar's office to be answered. By General Order, 19th October, 1852, rule 22, every such petition presented to the court shall be entered with the registrar of the court to which the same is presented, and the order directing the attendance thereon shall be signed by the registrar, and shall be under the seal of the court; and the original petition, when served, shall be returned to the registrar on or before the hearing, and be filed of record. And it shall not be necessary to recite such petition at length, but only the prayer thereof, in any order pronounced by the court thereon. In cases of emergency, petitions will be answered at the same time the order is made (*p*).

Supplemental petitions;

and by way of revivor.

If after filing a petition the petitioner himself becomes bankrupt, his assignees, if they would have the benefit of the petition, must file a supplemental petition, otherwise the original one will be dismissed (*q*). So, if the petitioner die, the petition must be revived by his personal representative (*r*).

Petition to annul, how dismissed in case of delay.

Where a petition to annul stands over to enable the petitioner to bring an action at law, which he neglects to do, the respondents

(*l*) *Ex parte Young*, 1 M., D. & D. 117.
 (*m*) *Ex parte Story*, 4 D. & Ch. 504.
 (*n*) *Ex parte Peyron*, 2 Rose, 368; *Ex parte Mills*, Buck, 230; *Ex parte Rawlinson*, 1 Glyn & J. 19; *Ex parte Kirk*, Buck, 478.

(*o*) *Ex parte Thompson*, 3 D. & Ch. 612.
 (*p*) *Ex parte Moody*, 1 D. & Ch. 34; *In the matter of Matthews*, Ib. 35.
 (*q*) *Ex parte Birdwood*, Buck, 99.
 (*r*) *Ex parte Whittington*, Buck, 235.

may apply to the court to have the petition put in the paper, in order to its being dismissed; but a new petition is now unnecessary (s).

Deposit of Costs on Appeal.]—By 12 & 13 Vict. c. 106, s. 12, every appeal to the court of appeal shall be subject to such regulations in regard to deposit of costs, as shall, by any general rule or order to be made in pursuance of the act, be directed.

Deposit for costs of appeal.

By rule 29 of the General Order of 19th October, 1852, at or before the time of entering an appeal against a decision or order of the Court of Bankruptcy, the party intending to appeal shall (in any case not otherwise specially provided for) deposit with the chief registrar such sum, not being less than 10*l.* and not exceeding 40*l.*, as the commissioner, whose order or decision is appealed from, or some other commissioner of the same court, shall direct, to satisfy so far as the same may extend any costs that the appellant may be ordered to pay, and, in the absence of any directions of a commissioner as to the amount of deposit, the sum of 20*l.* shall be so deposited. If it shall appear that there are several respondents in separate interests, the commissioner, if he shall think fit, may order a separate deposit as to every such respondent.

Amount of deposit.

An application to the court for a recall of the certificate, or for a rehearing of the application for the allowance of the bankrupt's certificate, is subject to such order, as to a deposit of a sum for costs, as the court shall think fit.

Deposits in case of applications to court for recall of certificate, &c.

By rule 20 of the same General Order, in cases in which personal service of any notice of motion is required, the same shall be effected by delivering to the party or parties to be served, and each of them, a duplicate of the notice of motion, and (rule 17) it must be served four clear days at the least before the day named in such notice as the day when the motion is to be made. But in cases where the parties have not been served, the court can order the parties to show cause against the order being made; but if the respondent appears, and requests time to oppose, it is a waiver of any irregularity in the notice (t).

Service of notice of motion, how made.

A copy of a petition must be served on the party or parties whose duty or interest it is to oppose it if necessary (u).

Waiver of notice.

So a petition by some of the directors of a railway company, dissolved pursuant to the stat. 9 & 10 Vict. c. 28, to annul a fiat against the company, must be served on some of the other directors

Service of petition, upon whom made.

Where some directors only of a railway company petition.

(s) *Ex parte Window*, 2 Glyn & J. 280.

(u) *Ex parte Spencer*, 1 Dea. 468.

(t) *Ex parte Morland*, 3 D. & Ch. 248.

CHAP. XII.

In case of petition of appeal.

In case of petition to annul or to dismiss petition for adjudication.

Assignees must all join in petition, or those not joining must be served.

who differed from the petitioners on the subject. It is not sufficient to serve it on the petitioning creditor and official assignee (x).

Where two creditors only opposed the allowance of the certificate before the commissioner, it was held that they must each be served with the petition of appeal; but whether that would be the practice in the case of a large number of creditors opposing, *quære* (y).

So, also, a petition to annul a fiat or dismiss a petition for adjudication, unless presented by the bankrupt, must be served upon him personally (z). And where the bankrupt died after the petition was presented, it stood over to be served upon his personal representative, or those entitled to representation (a). If the petition is presented by the bankrupt it must be served upon the assignees; a petition of a creditor against the allowance of the certificate need not be served upon the assignees unless the petitioner by his petition also seeks to prove; but if a petition imputes fraud in the conduct of the assignees under the bankruptcy (b), it must be served on the assignees, although it be to annul with consent of creditors (c), unless the assignee is one of the creditors consenting (d), and though the assignees are chosen after the petition was presented (e); but they need not be personally served (f). And in all cases, save to annul with consent (g), the petition to annul must be served on the petitioning creditor. Also, it has been ruled, that a petition to annul a second fiat must be served on the assignees under the first (h); a petition for leave to prove a debt or enter a claim must be served upon the assignees (i). If one of several assignees petition he must either join his co-assignees as petitioners, or serve them with the petition (j); and if an assignee petition for leave to bid for the purchase of part of the bankrupt's property, the other assignees and the bankrupt must be served with the petition (k). A petition by an equitable mortgagee, for sale of the mortgaged premises, must be served on the assignees, and not on the solicitor to the bankruptcy (l); and where the mortgagees

(x) *Ex parte Morrison*, 11 Jur. 567; 16 L. J., Bcy. 11.

(y) *Ex parte Johnson*, 4 De G. & S. 25; 15 Jur. 185; 20 L. J., Bcy. 6.

(z) *Ex parte Barber*, Buck, 493.

(a) *Ex parte Leworthy*, Mon. 54.

(b) *Ex parte May*, 3 Dea. 382; Mon. & C. 18.

(c) *Ex parte Race*, 2 Mon. & A. 242.

(d) *Ex parte Ramsay*, 1 Mon. & A. 708; *Ex parte Eastcourt*, 1 D. & Ch. 458.

(e) *Ex parte Platt*, 3 Mon. & A. 62;

2 Dea. 227.

(f) *Ex parte Hanks*, 2 Mon. & A. 383; *Ex parte Byrom*, 6 Jur. 200.

(g) *Ex parte Ramsay*, supra.

(h) *Ex parte Irvine*, 1 Mad. 74.

(i) *Ex parte Hellings*, 2 Dea. 152.

(j) *Ex parte Fosbrooke*, 3 Dea. 686; Mon. & C. 176; *Ex parte Grierson*, 8 Jur. 430.

(k) *Ex parte Bage*, 4 Mad. 459.

(l) *Ex parte Cooks*, 3 D. & Ch. 24.

were also the assignees, the court refused to make the order *ex parte*, but ordered service of the petition on the bankrupt and one of the creditors (*m*). And a petition to set aside a sale must be served on the purchaser (*n*). A petition by some of several legatees to whose account in the bankruptcy a fund is standing, praying the payment of their portions of the fund, need not be served on the executors (*o*). A petition to tax a solicitor's bill, and stay his proceedings at law, must be served on the solicitor (*p*), and need not be served on the assignees (*q*), unless the bill has been paid by the assignees (*r*), nor is it the practice to serve it on the petitioning creditor (*s*); and if the solicitor has taken the benefit of the Insolvent Debtors Act, the petition must still be served on the solicitor, and not on his assignees (*t*). The service of a petition for payment of the costs of taxing a bill need not be personal (*u*).

Petition to set aside sale, to be served on purchaser.

To tax solicitor's bill, on solicitor.

A petition to surcharge and falsify the accounts of assignees, with a view of striking out certain payments to an accountant, need not be served on the accountant (*x*). A petition to set aside a purchase by an assignee must be served upon the assignees and the bankrupt (*y*). A petition of joint creditors to be paid a dividend out of the surplus of the separate estate must be served on the bankrupt, or his executor, if deceased (*z*). A petition for payment of dividend declared is against the official assignee, and need not be served on the creditors' assignees (*a*); and a petition to have a fiat, which had been impounded, delivered out, must be served upon the party upon whose petition the fiat was impounded. A petition to incorporate separate fiats against partners with a joint fiat, and to review the choice of assignees, need not be served upon the bankrupt (*b*). A petition to refer an affidavit for scandal is against the solicitor who files the affidavit, and need not be served on the respondents to the original petition (*c*). Personal service on the bankrupt, where necessary, will not be waived by his taking copies of the affidavits (*d*), or by his applying to advance the petition (*e*);

Service of petition on assignees.

Petition for payment of dividend, and to have impounded fiat delivered out, upon whom to be served.

To refer affidavit for scandal.

Taking copies of affidavits, applying to

- (*m*) *Re Parker*, Mon. & B. 394.
- (*n*) *Ex parte Shepley*, Mon. 353.
- (*o*) *Ex parte Peerman*, 6 Jur. 351.
- (*p*) *Ex parte Griffith*, 1 Dea. & C. 41; Mon. 517.
- (*q*) *Ex parte Payne*, Mon. 455; *Ex parte Christy*, 3 Mon. & A. 84.
- (*r*) *Ex parte Ainsworth*, 1 M., D. & D. 226.
- (*s*) *Ex parte Chadwick*, 5 Jur. 613.
- (*t*) *Ex parte Simpson*, 2 Dea. 400; 3 Mon. & A. 223.
- (*u*) *Ex parte Stephens*, 2 Mon. & A.

482.

- (*x*) *Ex parte Knight*, 3 Mon. & A. 53.
- (*y*) *Ex parte Bage*, 4 Mad. 459.
- (*z*) *Ex parte Wood*, 2 M., D. & D. 283.
- (*a*) *Ex parte Saunders*, 2 M., D. & D. 529.
- (*b*) *Ex parte Lister*, 3 Dea. 516; Mon. & C. 260.
- (*c*) *Ex parte Kirby*, Mon. 68.
- (*d*) *Ex parte Kendall*, 1 V. & B. 543.
- (*e*) *Ex parte Groome*, Buck, 39.

CHAP. XII.

advance petition, and other acts of bankrupt, no waiver of personal service.

If bankrupt abroad or in concealment, court may dispense with personal service.

So in case of petitioning creditor;

and of party, by whom debt proved;

and of assignees.

Application to dispense with personal service to be made promptly.

or even by his admitting the receipt of the copy of the petition (*f*), or filing an affidavit in answer (*g*).

If, however, the party cannot be met with, in order to serve him personally, as, if he be abroad, or it appears that he keeps out of the way for the purpose of avoiding being served with the petition, the court, in general, will allow of its being served in some other manner. So, where a petitioning creditor cannot be found, service of a petition to annul, at the place of residence of the petitioning creditor, mentioned in his affidavit of debt, and on the solicitor who filed the petition for adjudication, will be ordered to be good service (*h*). And where the petitioning creditor was living at the bankrupt's house, but could not be seen on account of alleged illness, service on the solicitor to the bankruptcy was ordered, and that a copy should be left at the bankrupt's house (*i*). A petition to be discharged from custody by a party improperly arrested may, by order, be served on the attorney who issued the writ (*k*). Upon a petition to expunge a debt proved by a partnership, where the partner who proved the debt was dead, and the other partner resided abroad, the court, on motion, ordered that service of a copy of the petition on the attorney appointed to receive the dividend should be deemed good service (*l*). So, where one of two assignees had quitted the country, and the other had petitioned that a new assignee might be chosen in his stead, &c., and an affidavit was made of the service of the petition at the last place of residence of the absent assignee, the court made an order accordingly, and that such service should be deemed good service (*m*). Upon a petition to remove two assignees, one of whom absconded, it was ordered, that service on the solicitor who had acted for them under the fiat, and the leaving of a copy at the last place of abode of the absconding assignee, should be deemed good service (*n*). But this application to the court must be made in time, so that this special service may be made within the time limited for the common and ordinary service; and, therefore, where such an application, as to the service of a petition to stay the certificate, was not made until the petition day, the court refused it, unless it could be shown that an earlier application was prevented by the conduct of the party to be served (*o*).

(*f*) *Ex parte Furnival*, 1 Glyn & J. 254.

(*g*) *Ex parte Harford*, Buck, 38.

(*h*) *Ex parte Peppin*, 2 Dea. & C. 361.

(*i*) *Re Sell*, 2 Dea. & C. 333.

(*k*) *Ex parte Helsby*, 1 Dea. & C. 18; Mon. & B. 265.

(*l*) *Ex parte Peyton*, Buck, 200; *Ex parte Anderson*, 1b. 38; *Ex parte Palon*, 3 Mad. 116.

(*m*) *Ex parte Bonbonous*, 3 Mad. 23.

(*n*) *Ex parte Cox*, 2 Dea. & C. 191.

(*o*) *Ex parte Harrison*, 1 Glyn & J. 71.

Service at the last known place of residence of the party in this country, when he has gone out of the jurisdiction, is not sufficient, unless an order for substitution of service has been obtained (*p*).

An affidavit must be made of the service, and filed before the petition is heard (*q*). The service of a petition cannot be deposed to *vivá voce*; unless the copy which has been served is produced (*r*); and an undertaking of the respondents' solicitor to accept service is not sufficient to enable the petitioner to obtain an order, if they do not appear at the hearing (*s*). Where a defective affidavit of service was produced at the hearing, and also a supplemental affidavit to remedy the defect, and the petition was directed to stand over, to give the bankrupt an opportunity of answering this latter affidavit; it appearing afterwards that this latter affidavit had not been filed at the time it was produced at the hearing, although filed before the day to which the case was adjourned, the court dismissed the petition with costs (*t*).

Service of petition proved by affidavit filed before hearing, but affidavit dispensed with, if copy served, produced.

The practice as to service seems to be the same on notice of motion as on petition, save that a petition, if not duly served, can have no order made on it, although it will probably be allowed to stand over with leave to serve; but on a motion a rule nisi may be made *ex parte*, with directions that it shall be served on the party to be affected by it, if the court think fit to make such order. (See ante, and rule 17 of the Orders of 19th October, 1852.)

Practice as to service on notices of motion.

As to evidence on interlocutory applications (*see post, Evidence, Affidavits*).

The Hearing.]—By General Order of 19th October, 1852, rule 26, except in cases of emergency all motions shall be made, and all petitions heard, before the commissioner acting in the particular bankruptcy to which the matter relates, or the commissioner acting for him in his absence, and in London, on the day on which he sits as commissioner of the day, and at the sitting of the court, and in the order set down in the registrar's diary, unless the commissioner shall otherwise direct. And, rule 27, motions made by the bar shall be heard according to the right of precedence, and motions made by attorneys in the order in which they have been set down in the registrar's diary, previous to the public sitting of the court; and, by rule 28, a short note of every motion shall be

Provisions as to hearing on motions and petitions.

(*p*) *Ex parte Eyre*, 2 De G., M. & G. 946; 16 Jur. 1147; 22 L. J., Bcy. 3.

(*q*) *Ex parte North*, 4 Mad. 395.

(*r*) *Ex parte Bolton*, 3 Mon. & A. 246.

(*s*) *Ex parte Baker*, Mon. & C. 156; 4 Dea. 55.

(*t*) *Ex parte Long*, 1 Glyn & J. 351.

CHAP. XII.

delivered to the registrar previous to the public sitting of the court, specifying the bankruptcy or other matter to which the same relates, the name of the party on whose behalf the same is made, the name and residence of the attorney of such party (and of the counsel, if the same be made by counsel), also the name of any party, and the name and residence of his attorney, on whom any notice of such motion has been served.

Intended applications to be entered with registrar.

Order of hearing of motions and petitions.

When advanced.

How postponed;

or two heard together.
If application to postpone not made till case called on, granted only on terms of paying full costs of the day.

All applications should in the first place be entered in the registrar's book, and be made as he appoints (*u*).

As to petitions or motions entered in the paper, they will be called on in their order, but motions or petitions consented to or unopposed (*x*), or a motion to postpone the hearing of a petition in the paper of the day, though opposed (*y*), will be heard before the paper of the day is gone into. Any application, if the nature of the case require it, may be heard out of its turn, upon application to be made to the court by motion that it may be advanced; but the court will seldom entertain an application for hearing a petition out of its turn, except one regarding the allowance of a certificate or order of discharge, or, it would seem, one affecting personal liberty (*z*); and before such an application is made, notice of the intention to make it should be given to the opposite party (*a*), or that party must appear and consent (*b*). On the other hand, either party may apply by motion to have the hearing of the matter postponed; the application is generally by motion on notice, and sometimes supported by affidavit (*c*). The same rule applies to the having two motions or petitions heard at the same time (*d*). If the motion to postpone the hearing be not made until the matter is called on (*e*), or until what are usually termed costs of the day have been incurred, the court will make it one of the terms of their granting it, that the applicant shall pay the costs of the day (*f*); and where the bankrupt's petition to annul was called on for hearing, and stood over for the respondents to file affidavits in answer, the court required them to pay full costs of the day,—not the usual 20s. costs (*g*); but the nonpayment of such costs was not admitted as an objection to the hearing of the petition when

(*u*) *Re Hembery*, 9 L. T., N. S. 121.

(*x*) 1 Dea. & C. 306.

(*y*) *Ex parte Clarke*, 1 Dea. & C. 452.

(*z*) See *Ex parte Anderson*, 1 Rose, 93.

(*a*) *Re Bell*, 1 Glyn & J. 182; *Ex parte Grazebrook*, 3 Dea. & C. 199.

(*b*) *Ex parte Brodie*, 2 Dea. 318; 3 Mon. & A. 205.

(*c*) See *Ex parte Gitton*, Buck, 549; *Ex parte Parker*, Ib. 313.

(*d*) *Ex parte Abbott*, 2 M., D. & D. 64.

(*e*) Anon., 1 Rose, 24.

(*f*) *Ex parte Rogers*, 2 M., D. & D. 503.

(*g*) *Ex parte Kent*, 2 Dea. 287.

called on again, except upon affidavit that they have been previously demanded (*h*). The rule at present is said to be, that unless there are special reasons to the contrary, when application is made to postpone a matter in the paper of the day, it shall stand at the bottom of the general paper, and not stand over to any particular day; and that, to postpone the hearing to a particular day, the application must be made the day before the matter is in the paper for hearing (*i*). And when called on for hearing, if the respondent do not appear, and the matter stands over because the applicant has not his affidavit of service in court, the matter cannot keep its place in the paper (*k*). When a matter is referred for impertinence merely, the court will not on that account stay the hearing; but if the petition or affidavit in support is referred for scandal, the hearing is always stayed (*l*). And when called on for hearing, it is no objection to the respondent's right to have a petition referred for impertinence that on a former occasion he had taken and succeeded in a formal objection to the petition (*m*). The pendency of an indictment is no ground for deferring the hearing of a petition to annul, if the parties indicted do not object to proceed (*n*).

Postponement to particular day, when made.

Hearing, when stayed; when not; if reference made for scandal.

When the matter is called on, if the applicant appear by his counsel, and the respondent do not, the court will make such order as the facts proved may warrant, or the petitioner, if the application be by petition, takes such order as he can abide by; the other party is then at liberty to move to discharge it (*o*); but to entitle the petitioner to any order he must produce an affidavit of service before the rising of the court; an undertaking of the respondent to appear is not sufficient (*p*). The service of a petition cannot be proved *vivâ voce*, unless the copy which has been served is produced to the witness (*q*). If the respondent appear, and the applicant do not, the court will dismiss the application: and in such a case, it is incumbent on the respondent, applying for costs, to produce an office copy of the affidavit of service, before the rising of the court on the day when the application is called on (*r*); that being the only proper evidence of the filing of an affidavit (*s*), unless the petition had been previously called on, and the hearing postponed to a particular day by consent, in which case the re-

Practice as to order, when respondent does not appear.

No order, without affidavit of service, in such case.

Application dismissed, respondent appearing, but applicant not. No costs to respondent in that case, unless affidavit of service produced.

(*h*) *Ex parte Leech*, 2 Glyn & J. 78.
 (*i*) *Ex parte Telfourd*, 2 Mon. & A. 389.
 (*k*) *Ex parte Crossley*, 3 Dea. 404; 1 Mon. & C. 93.
 (*l*) *Ex parte Gomm*, 1 Dea. 366.
 (*m*) *Ex parte Cunningham*, Mon. & M'A. 193.

(*n*) *Ex parte Bromley*, Mon. & M'A. 92.
 (*o*) *Ex parte Wilks*, 3 Dea. & C. 338.
 (*p*) *Ex parte Kirkaldy*, 4 Dea. & C. 52; *Ex parte Baker*, Mon. & C. 156.
 (*q*) *Ex parte Bolton*, 3 Mon. & A. 246.
 (*r*) *Ex parte Astell*, Buck, 396.
 (*s*) *Ex parte North*, 1b.

CHAP. XII.

spondent is entitled to his costs without an affidavit of service (*t*). But if neither the petitioner nor the respondent appear at the time the petition is called on, the court may then order it to be struck out of the paper.

But if both parties appear, then the matter of the petition is argued by the counsel for the petitioner, then by the counsel for the respondent, and lastly, by the senior counsel for the petitioner in reply.

Objection of form overruled, the merits will be at once gone into. Costs of the day, where objecting party unprepared to go into merits.

Where a party has an objection of form to a petition or notice of motion, he should come prepared to argue the matter upon the general merits also, in case the objection be overruled; and the court in such a case will allow the matter to stand over, only upon payment of the costs of the day by the party thus unprepared (*u*); and the pendency of a petition to annul a separate fiat in favour of a joint fiat is no objection to the hearing of an application to appropriate funds under the separate fiat (*x*). Where the assignees are chosen after the bankrupt has applied to annul, the application may be heard without any supplemental proceeding if the assignees have been served (*y*).

Rule that bankrupt not heard in answer on question of proof. Probable exceptions.

The bankrupt cannot in general be heard in answer on a question of proof, as his estate is sufficiently represented by the assignees (*z*). But this rule may be perhaps subject to exception if he shows that his right to an allowance, or its amount, depends on the admission or rejection of the proof tendered, or that there is a surplus of his estate (*a*). If served he has been held entitled to his costs of appearance (*z*); but it may be doubted whether if he appear without showing any interest in the result, he would now be allowed even his costs of appearance.

After hearing the counsel on both sides, the court either makes an order, or directs an issue or an action; or, where the case requires it, an examination *vivâ voce*.

Petitioner attending hearing, privileged from arrest.

A petitioner attending the hearing of a petition is privileged from arrest; and where the petitioner is a married woman, her husband accompanying his wife to attend the hearing of her petition is in like manner privileged in going and returning (*b*). Also, a petitioner in prison for contempt incurred in a cause in Chancery may obtain an order in the cause to attend the hearing of his petition in bankruptcy (*c*).

Application for discharge,

Where a defendant to a suit in Chancery, in contempt for non-

(*t*) *Ex parte Ward*, 1 Dea. 86; 2 Mon. & A. 389.

(*u*) *Ex parte Bellott*, 2 Mad. 261.

(*x*) *In re Haddon*, Mon. & C. 42.

(*y*) *Ex parte Austen*, 1 M., D. & D. 247.

(*z*) *Ex parte Fairman*, 3 Dea. 467;

M. & Ch. 125.

(*a*) See *Ex parte Pitchforth*, 3 Dea. 487; M. & Ch. 96.

(*b*) *Ex parte Britten*, 1 M., D. & D. 278.

(*c*) *Langstone v. Cooke*, 6 Jur. 544.

CHAP. XII.

payment of costs, was arrested while attending the hearing of his petition in bankruptcy, it was held that an application for his discharge must be made to the Court of Bankruptcy, as the arrest was a contempt of that court (*d*). This decision is, however, open to question, and has been commented on in another place. (*See Bankrupt Protection.*)

where made ;
when peti-
tioner wrongly
arrested.

Certificates from Registrar.]—By sect. 53 of the Act of 1861, any matter before a registrar may be carried to the commissioner by means of a certificate given by the registrar, the practice as to which has been remarked on (*ante, Registrars*). The mode of hearing a matter on such certificate is like that of a hearing on motion.

Matters before
registrar may
be transferred
to commis-
sioner.

Issue.]—By stat. 12 & 13 Vict. c. 106, s. 15, the Court of Appeal in Chancery may, if it think fit, direct any question of fact arising before it to be decided by a jury in London or Westminster, or by a jury before a judge of assize, in manner and form provided in lieu of a feigned issue by an act passed in the parliament holden in the eighth and ninth years of the reign of her Majesty, intituled “An Act to amend the Law concerning Games and Wagers ;” and after any question so authorized shall have been decided, a new trial thereof may be moved for in the court out of which the writ of summons, sued out under that act, shall have been issued.

Court of Ap-
peal may direct
issues to be
tried as to
matters of
fact.

The question has been before discussed whether the court of the commissioners has a similar power, and as the result of the discussion an opinion is there diffidently advanced that such a power is involved in those given by the 1st sect. of the Act of 1861 ; but it is probably a safer course, if an issue be actually required, to take an adverse judgment of the commissioner, and bring the matter by appeal before the Court of Appeal in Chancery, which has the power by express enactment. But it is only in cases of doubt, where the material facts of the case are disputed in the affidavits on both sides, that the court will direct an issue (*e*) ; and consequently not until after it has heard all the evidence read, and the case fully argued ; unless the counsel on both sides agree that such must ultimately be the result if the case be gone into (*f*). And if upon the hearing the matter appear clear, the court will at once decide upon the petition and affidavits, without directing an issue, although the petitioning creditor may be desirous of trying it (*g*). Where, upon a pe-

Whether the
court of com-
missioners
have similar
power, *quære*.

Issues only
directed in
doubtful cases,
although peti-
tioner desirous
of trying the
point.

(*d*) *Plumer v. M'Donald*, 11 Jur. 899.

Ex parte Trustrum, Buck, 550.

(*e*) See *Ex parte Williamson*, Buck, 546 ; *Ex parte Billiald*, Ib. 220.

(*g*) *Ex parte Gallimore*, 1 Mad. 67 ;

Ex parte Gulston, 1 Atk. 193 ; *Ex parte Wilson*, Ib. 217.

(*f*) *Ex parte Heygate*, Buck, 442 ; see

CHAP. XII.

Issue, when
not directed.

Costs of action
to try validity
of adjudication
borne by bank-
rupt; secus, if
issue directed
on his petition.

Court, in order
directing issue,
states terms of
issue and par-
ties, &c.

Petition
stands over
while issue
being tried.

tition for a supersedeas, the act of bankruptcy upon the proceedings appeared to be insufficient, and there was no affidavit of any other act which would support the commission, and no question raised which could make a trial at law useful, the court superseded the commission without an issue (*h*). Even in such case, although the trading petitioning creditor's debt and act of bankruptcy appear on the face of the proceedings to be sufficient, yet, if the court be satisfied of the insufficiency of any of them from the affidavits, it will annul the fiat without an issue (*i*). Nor will the court direct an issue in any case where felony is imputed to one of the parties by the petition, nor where a matter of criminal charge would necessarily form the subject of the issue, if directed (*h*). If the bankrupt dispute the validity of the adjudication by an action at law, it is at the peril of costs in case he fail; but if he fail in an issue directed upon his petition, he does not pay costs; the court, therefore, in some cases, will refuse to direct an issue on the petition of the bankrupt to annul, but leave him to his action (*l*): the bankrupt can bring an action to try its validity, and, if he succeed, may apply by petition, and the adjudication will be annulled as of course (*m*); but in cases of doubt, as to the requisites of the adjudication, the court, even upon the petition of the bankrupt to annul, will direct an issue (*n*). Or if, in any case, the subject of the petition, as, for instance, the validity of the adjudication, be in a course of litigation before a jury, the court will retain the petition, and defer the consideration of it until the event of the trial at law be known (*o*).

Upon directing an issue the court will state the terms of it in the order, and direct who shall be made plaintiff and defendant, and, if necessary, what shall be deemed admissible as evidence, and who shall be examined as witnesses, &c. (*p*); and this without much regard for the strict rules of evidence in courts of law, wherever the observance of such rules would prevent a thorough and complete examination of the question in dispute (*q*). In the mean time the petition is ordered to stand over to give time for the issue to be tried; and if the plaintiff do not proceed to trial before the time fixed, or account satisfactorily for his not having done so, the court will dismiss the petition (*r*). Where the court

(*h*) *Ex parte Burgess*, Buck, 233.

(*i*) *Ex parte Gallimore*, 2 Rose, 234.

(*k*) *Ex parte Scott*, Buck, 275.

(*l*) *Ex parte Billiald*, Buck, 220; *Ex parte Nutt*, 1 Atk. 102.

(*m*) *Ex parte Dick*, 1 Rose, 51; *Ex parte Marks*, 1 Glyn & J. 70.

(*n*) *Ex parte Collins*, 1 Rose, 373; *Ex*

parte Gulston, 1 Atk. 193.

(*o*) *Ex parte Price*, Buck, 230; 3 Mad. 228.

(*p*) See *Ex parte Carter*, 1 Glyn & J. 326.

(*q*) See *Ex parte Williamson*, Buck, 546; *Ex parte Carter*, supra.

(*r*) *Ex parte Ranken*, 3 Mad. 371; *Ex parte Window*, 2 Glyn & J. 280.

CHAP. XII.

orders a trial at law upon two issues, there need be but one record and one trial(s). The court will not order an advance to the bankrupt, to enable him to meet the expenses of the trial of an issue to try the validity of the bankruptcy, unless the assignees consent (t).

Advance to bankrupt for costs of issue, when made.

After the issue is tried the court will proceed and make its order upon the petition, and will not in general direct another issue or trial, unless for very special reasons (u). And if the issue be decided against the petitioner, it is not necessary for the other party to present a counter-petition, in order to have the decision of the court, but the petition can be set down again for hearing on further directions, and on the hearing the court will dismiss the original petition (x). Upon an application for a new trial of an issue, it is not of course that application may be made to the judge who tried the issue for his notes of the trial; some ground must be shown for the application (y). And where, upon an issue to try if there was a good petitioning creditor's debt, the bankrupt obtained a verdict upon an objection he had not alleged in his petition, the court directed a new trial (z).

No second issue directed, unless in very special case.

After trial of issue, petition to be set down on further directions.

In a former part of this work (*see ante, Appeals*) the present writer has ventured the opinion that the motion for a new trial of an issue ought to be made to the court whence the writ issues. If the commissioners' court has the power to direct an issue, then no statute limiting the court where the motion for a new trial should be heard, the question, it is conceived, would be determined by the general law on the matter, and the motion should be heard in the court which directed the issue.

The Court of Appeal will sometimes, instead of directing an issue, refer the matter back to the commissioner for an inquiry upon some specific point (a).

Trials by Jury.—By sect. 59 of the Act of 1861, power is given to the Court of Appeal in Chancery to summon juries, and to try questions of fact before itself, with such assistance. The section is set out ante, p. 36, and the question is there discussed, whether the court of the commissioners has the like power or not; and the author's opinion, advanced with diffidence, is that it has the power, but it has never yet been exercised either by the court

Power to summon juries under Act of 1861.

(s) *Ex parte Fisher*, 1 M., D. & D. 209.

(t) *Ex parte Chambers*, 1 Dea. 197.

(u) See *Ex parte Prosser*, Buck, 77; *Ex parte Bryant*, 2 Rose, 1; *Ex parte Dick*, 1 Rose, 51.

(x) *Ex parte Caponhurst*, Buck, 476.

(y) *Ex parte Church*, 2 Dea. 72; S. C. *Ex parte Chuck*, 3 Mon. & A. 15.

(z) *Ex parte Christie*, 2 Dea. & C. 461.

(a) See *Ex parte Hudson*, 2 Russ. 456.

CHAP. XII.

of the commissioners or the Court of Appeal; and it is not likely that recourse will be had to it while the power to direct issues is retained, unless, perhaps, the commissioner elects to try a bankrupt for misdemeanor before himself, (see sect. 159 of the Act of 1861). This, however, he is never compellable to do, having always the option to direct the prosecution before the ordinary criminal tribunals of the country (*b*).

Where petitioner out of jurisdiction, respondent may have security for costs, but must apply before taking any step.

Security for Costs.]—Where a petitioner resides abroad, or out of the jurisdiction, the respondents may apply to have security for costs, and the application is of course, if made before the respondent, applying, has filed any affidavit, or taken any other step (*c*): but the application is considered *strictissimi juris*; and where the respondents, the assignees, had examined a witness before the commissioners, with respect to the petition, and had applied to the court for an order on the registrar to attend with the examination at the hearing of the petition, the application for security was held to be too late (*d*). A bankrupt plaintiff in an action at law, resident abroad, will not be required to give security for costs, although he has not surrendered to the bankruptcy (*e*), more especially if he has obtained an order to enlarge the time for his surrender; for the court cannot presume that he will commit a felony (*f*); and the court will not require a bankrupt petitioner to give security for the costs of his petition before hearing (*g*).

In other respects, there seems nothing peculiar in the practice of the Court of Bankruptcy with regard to security for costs, it being governed by precisely the same principles as that of the Court of Chancery, to which the student is referred.

Costs under power vested in court by Act of 1861.

Costs.]—By sect. 213 of the Act of 1861, any court acting under that act may in all matters before it award such costs as shall seem fit and just; and all costs so awarded shall be recoverable in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered, and the like remedies may be had, upon an order of such court for costs, as upon a rule of any of the said superior courts for costs; but no such order shall affect any lands, tenements or hereditaments as to purchasers, mortgagees or creditors, unless and until it shall be registered, and, if necessary, re-registered, pursuant to the pro-

(*b*) *Re Wilson, Ex parte Dobson*, 1 N. R. 75.

(*c*) *Ex parte Scott*, 2 Dea. 556; 3 Mon. & A. 393; *Ex parte Hinds*, 3 De G. & S. 613.

(*d*) *Ex parte Tull*, 1 Mon. & A. 80; 3

Dea. & C. 503.

(*e*) *M'Culloch v. Robinson*, 2 N. R. 852.

(*f*) *Roper v. Philips*, 3 Man. & R. 84.

(*g*) *Ex parte Munk*, 2 Dea. & C. 120.

visions of the act of the session of parliament of the twenty-third and twenty-fourth years of the reign of her Majesty, chapter thirty-eight, any notice of any such order to any such purchaser, mortgagee or creditor in anywise notwithstanding.

By the 12 & 13 Vict. c. 106, s. 249, since repealed, the court was empowered in all matters before it to award such costs as to such court should seem fit. This enactment, as to the discretion of the court on the subject of costs, had long been the settled practice in bankruptcy. It may be advisable to give a few of the decisions which were made before the present statute came into operation, as also some of those which have been since made under it, though cases are rarely of much use as precedents in a matter so entirely within the discretion of the court, each individual case depending on its own special circumstances.

The court, in the exercise of its discretion, usually gives costs by its order to the party succeeding; but to this there are many exceptions. The court, in general, will not give costs against an uncertificated bankrupt unless in case of fraud (*h*), but this rule only applies to a petition to annul (*i*); and even in a petition by the bankrupt to annul for want of an act of bankruptcy, which yet he was fully aware he had committed, his petition was dismissed with costs (*h*). So, also, where the bankrupt petitioned to annul on the ground of infancy, and it appeared that on his marriage, long before his bankruptcy, he had made an affidavit that he was of age, the petition was dismissed with costs (*l*). So, also, on a petition to annul, the bankrupt pays the costs of a reference against the opinion of the court (*m*); and where the bankrupt presented an unnecessary petition respecting his certificate, the petition was dismissed with costs, the order not to be drawn up until he had obtained his certificate (*n*). And in a case where an issue was directed, on the petition of the bankrupt, and the verdict was in his favour, the court refused to give him costs, because he should have tried the validity of his commission in an action at law before he applied for a supersedeas (*o*); though now it is otherwise, and the bankrupt, like any other party, succeeding in an action to annul directed by the court, always has the costs (*p*).

Party succeeding entitled to costs.

Exceptions.

(*h*) *Bromley v. Goodere*, 1 Atk. 76; *Ex parte Heath*, Mon. & B. 116; *Ex parte Barnett*, 2 M., D. & D. 325; *Ex parte Munk*, 2 Dea. & C. 125, per Erskine, C. J.

(*i*) *Ex parte Bailey*, 3 Dea. 43; 3 Mon. & A. 413.

(*k*) *Ex parte Thompson*, 4 Dea. & C. 534; 2 Mon. & A. 41.

(*l*) *Ex parte Bates*, 2 M., D. & D. 337.

(*m*) *Ex parte Neirincks*, 1 Dea. 78; 2 Mon. & A. 542.

(*n*) *Ex parte Shore*, 1 Dea. & C. 512.

(*o*) *Ex parte Marks*, 1 Glyn & J. 70.

(*p*) *Ex parte Thomas*, 1 Dea. & C. 443; and see *Ex parte Millington*, 3 Dea. & C. 298, 307.

CHAP. XII.

Bankrupt has costs, if petition against certificate dismissed.

Petitioners may forfeit right to costs by laches.

General rule not to give costs on peti.

If a petition against the allowance of the certificate be dismissed, it is usually dismissed with costs to be paid to the bankrupt; yet if in such a case the conduct of the bankrupt appear to have been such as not to entitle him to any indulgence from the court (*q*), as if he has misled the creditor by a statement, the truth of which he on the petition denies, although he does not deny having made the statement (*r*), or the like, the court will not give him his costs. If no good grounds be shown for bringing a creditor before the court to have his debt expunged, he will be allowed his costs (*s*); but if by his affidavit he has misled the assignees into the application he will not (*t*). So laches of the petitioners may forfeit their right to costs, where, for instance, assignees discovered circumstances materially affecting a creditor's right to prove, and allowed seventeen months, during four of which the creditor was in this country, and might have been examined, to elapse, and then applied to expunge or reduce the proof, they were not allowed the costs of the application, though they succeeded in reducing the proof largely (*u*). Where a petition by a creditor to annul an adjudication is dismissed, yet if the case has been suspicious he will not be ordered to pay costs. Where a petitioning creditor, after suing out separate fiats against partners, obtained an order to annul the separate fiats and to sue out a new joint fiat, the costs of the separate fiats were directed to be paid out of the joint estate and not by the petitioning creditor, unless there was misconduct in the petitioning creditor in suing out the separate fiats (*x*), or the separate fiats were illegal (*y*); and where the petitioning creditor under the joint fiat had been put to costs in establishing the joint fiat by the opposition of the assignees, he was held entitled to his costs out of the estate, and as between solicitor and client (*z*). When an adjudication is annulled for fraud, the assignees cannot have their costs of appearing from the petitioning creditor (*a*). The petition of a creditor to establish a proof rejected by the commissioner, if dismissed, is dismissed with costs, even though the commissioner rejected the proof for an insufficient reason (*b*); and the general rule is, not to give costs to either party on a petition which

(*q*) *Ex parte Stevens*, Buck, 389; 4 Mad. 261.

(*r*) *Ex parte Enderby*, 5 Mad. 76.

(*s*) *Ex parte Wilson*, 1 M., D. & D. 586.

(*t*) *Ex parte Hustler*, Buck, 177; 3 Mad. 117.

(*u*) *Ex parte Thompson*, 28 L. T. 72.

(*x*) *Ex parte Duncan*, 1 M., D. & D. 149; and see *Ex parte Peat*, 2 M., D. &

D. 788.

(*y*) *Ex parte Burdikin*, 1 M., D. & D. 156.

(*z*) *Ex parte Sharp*, 2 M., D. & D. 531.

(*a*) *Ex parte Caldecott*, 4 Dea. 264; Mon. & C. 600.

(*b*) *Ex parte Worthington*, Mon. & B. 265; 1 Dea. & C. 288.

CHAP. XII.

tion which
succeeds
against deci-
sion of com-
missioner.
Exceptions.

succeeds against the decision of the commissioner (c); but to this rule exceptions have been made, as where the petitioner establishes a clear and indisputable right of proof, which the commissioner rejected (d); or where a petition of the assignees to expunge a proof succeeded on a point not raised before the commissioner (e); and where the commissioner had objected to the proof in limine, refusing to enter into the examination of the proof tendered, and on petition his judgment was held to be erroneous, the costs of all parties were given out of the estate (f). The same holds where the commissioner has entered into the case, but has not exercised a deliberate judgment; and even where the commissioner has given a deliberate decision, if, on appeal, an action is directed, and the verdict is in favour of the petitioner, he will be entitled to the costs of the action, though not the costs of the petition (g); so, also, where the commissioner is clearly mistaken in a point of fact (h). And where, upon the application of the assignees, the commissioner had expunged the proof, and upon appeal the decision was reversed, the assignees were ordered to pay the costs of a petition to restore the proof (i). Where a petitioner succeeds in his petition, upon evidence not tendered to the commissioner, he pays his own costs, and those of the assignees are paid out of the estate (k); and where the creditor claimed to prove for 3,500*l.*, and the whole was rejected by the commissioner, and, upon a petition, he was, by consent, allowed to prove for 500*l.*, the court gave no costs on either side (l).

Nor will the court give costs to a petitioner in any case, unless prayed for by his petition (m), unless in the case of fraud (n); and if a respondent against whom costs are prayed is dead, and his executor appears for him, the executor cannot be made to pay costs if they are not prayed against him (o). But if a petition to tax a bill does not pray costs, the petition to confirm the certificate of taxation may pray the costs of the first petition (p). Where a

Costs not
given unless
prayed, except
in cases of
fraud.

(c) *Ex parte Allen*, Cooke, 608; *Ex parte Moggridge*, 1*b.*; *Ex parte Moulton*, Mon. 321; 1 Dea. & C. 76; *Ex parte Jones*, 3 Dea. & C. 525.

(d) *Ex parte Hooper*, 3 Dea. & C. 655; 1 Mon. & A. 395.

(e) *Ex parte Ellis*, Mon. & B. 254; and see *Ex parte Fairlie*, 3 Dea. & C. 290.

(f) *Ex parte Fiske*, Mon. & M'A. 93.

(g) *Ex parte Millington*, 3 Dea. & C. 298, 307; 1 Mon. & A. 114.

(h) *Ex parte Ridler*, 2 Dea. 225; 3 Mon. & A. 62.

(i) *Ex parte Brooks*, 4 Dea. & C. 209; 2 Mon. & A. 78.

(k) *Ex parte Price*, 1 Mon. & A. 51; 3 Dea. & C. 489.

(l) *Ex parte Waterhouse*, 3 Dea. & C. 108.

(m) *Ex parte Atkinson*, Buck, 215; *Ex parte Daintry*, Mon. 7.

(n) *Ex parte Taylor*, 4 Dea. & C. 125; 2 Mon. & A. 36.

(o) *Ex parte Harwood*, 3 Dea. & C. 252.

(p) *Ex parte Spurr*, Mon. 6.

CHAP. XII.

petition praying costs is dismissed it will generally be dismissed with costs (*o*). And where the petitioner does not appear at the hearing, costs are not given to a respondent unless the service of the petition appears by affidavit; but an office copy of an affidavit of service made in support of the petition is sufficient (*p*). In a case in which the petitioners do not appear at the hearing, and the petition is consequently dismissed with costs, this order cannot be drawn up if the petition has not been filed; the course in such a case is for the respondents to move that the fiat for hearing the petition be discharged with costs (*q*). If a petition is dismissed with costs, because the petitioner declines to open it, such costs will include all affidavits, although some were filed too late to be read; unless the objection is taken at the time the order to dismiss is made (*r*). Where an adjudication is annulled on account of a failure in the petitioning creditor to prove the requisites to support it, the petitioning creditor will be ordered to pay the costs of the petition and of annulling the adjudication (*s*), as where there is not a sufficient petitioning creditor's debt (*t*). So, also, if annulled on the ground of misnomer or wrong description of the bankrupt (*u*). (*See further as to costs of petition to annul.*) Where the petition is unnecessary, the petitioner will have to pay costs. As where the object of the petition might be obtained under one of the general orders in bankruptcy (*y*), or where, being entitled to a common order, the petitioners make a special case and pray for relief, which they abandon at the hearing (*z*), or are not entitled to (*a*); and in some cases, where a petition has been presented upon a subject over which the court has no jurisdiction, or without grounds to warrant it, the court have made the petitioner's solicitor pay the costs (*b*). Upon expunging scandal in affidavits, it is of course to order the costs as between solicitor and client to be paid by the solicitor filing the affidavits (*c*); and the agent in town who files an affidavit is responsible for the costs of expunging the scandal contained therein, although the affidavit is drawn by the country attorney (*d*). Where six affidavits were referred, and one

If petition unnecessary, petitioner must pay costs.
Instances.

Costs of expunging scandal.

(*o*) *Ex parte Columbine*, 2 M., D. & D. 24.

(*p*) *Ex parte Garth*, 2 Glyn & J. 392.

(*q*) *Ex parte Carnes*, 3 Dea. 124; 3 Mon. & A. 453.

(*r*) *Ex parte Sidebotham*, 3 Dea. 221; 3 Mon. & A. 495.

(*s*) *Ex parte Fletcher*, 2 Dea. & C. 374.

(*t*) *Ex parte Page*, 1 Glyn & J. 100.

(*u*) *Ex parte Horsley*, 2 Mad. 11; *Ex parte Perrey*, 2 Glyn & J. 225.

(*y*) *Ex parte Moore*, 2 Dea. & C. 369;

Ex parte Bonsor, 1 M., D. & D. 194.

(*z*) *Ex parte Rodgers*, 1 Dea. & C. 38.

(*a*) *Ex parte Smith*, 4 Dea. 123; Mon. & C. 347.

(*b*) *Ex parte Cuthbert*, 1 Mad. 78; *Ex parte Williamson*, Mon. & B. 266; see *Ex parte Heywood*, 13 Ves. 67; *Ex parte Arrowsmith*, 14 Ves. 209; *Ex parte Hinton*, 2 Dea. & C. 407; *Ex parte Williams*, 3 Dea. & C. 103.

(*c*) *Ex parte Knight*, 3 Mon. & A. 143.

(*d*) *Ex parte Wake*, 3 Dea. & C. 246.

only contained scandal, the registrar was directed to tax the costs, having regard to those not found scandalous as well as to those that were, and the party liable was ordered to pay the balance (e).

Upon a petition by an equitable mortgagee to have the premises sold, &c., if the mortgage is evidenced by a memorandum in writing, the court will allow him the costs of his application out of the proceeds of the sale, otherwise not (f); this is a well-established practice in bankruptcy, and when in such a case the commissioner had refused such costs, the order was reversed upon appeal (g); and where there is a written agreement the petitioner, although he has lost the memorandum, will be entitled to his costs, except so far as they have been occasioned by the loss of the instrument (h). Where there was no written agreement further than a letter by the bankrupt to the creditor, desiring him to hold the deeds after payment of his own mortgage, it was held sufficient to exempt the creditor from the payment of costs (i); and it is sufficient if the letter is written after the deposit made (k). And where deeds had been deposited by the bankrupt with his banker to secure payment of a bill, and afterwards the bankrupt by letter asking indulgence stated that the banker had ample security for his account, this was held to be a memorandum in writing, extending the deposit to the amount of the general account (l). A trader deposits policies of assurance with his bankers to secure the floating balance due from him, with a memorandum of the object of the deposit, of which notice is given to the insurance office; afterwards he takes a partner, and the policies remain, and are treated as a security for the floating balance due from the firm, but of this change in the object of the security no memorandum is signed, nor any notice given to the office. On the firm becoming bankrupt, it was held, that the bankers were entitled to the usual order, as in the case of an equitable mortgage, without a written memorandum (m); a letter written after the deposit, and referring to it in general terms only, was held sufficient to entitle the mortgagee to costs (n). So, also, a letter, noticing that certain deeds had been deposited to secure a particular debt, and a subsequent letter, requesting further accommodation, on the ground that the

Equitable mortgagee by writing entitled to costs; secus, if no written agreement.

(e) *Ex parte Knight*, 3 Mon. & A. 143.

(f) *Ex parte Brightwen*, Buck, 148; *Ex parte Trew*, 3 Mad. 372; *Ex parte Warry*, 19 Ves. 472; *Ex parte Sikes*, Buck, 349; Anon., 2 Mad. 228.

(g) *Ex parte Barclay*, 1 Jur., N. S. 1147.

(h) *Ex parte Rogers*, 7 Jur. 406; 3 M.,

D. & D. 297.

(i) *Ex parte Reid*, Mon. & M'A. 114.

(k) *Ex parte Reynolds*, 4 Dea. & C. 278; 2 Mon. & A. 104; *Ex parte Bisdee*, 1 M., D. & D. 333.

(l) *Ex parte Corlett*, 5 Jur. 555.

(m) *Ex parte Barnett*, De G. 194.

(n) *Ex parte Bisdee*, 1 M., D. & D. 333.

CHAP. XII.

depository held ample security, were together held a sufficient memorandum in writing as to the whole amount due, to entitle the mortgagee to costs (*o*); but where the deposit was upon a written memorandum, and was afterwards discharged, and on a fresh debt being contracted it was verbally agreed that the deposit should continue for the latter debt, the mortgagee was not entitled to his costs (*p*). But where several leases were deposited with a memorandum, and some of the leases were withdrawn, and others substituted, but without a fresh memorandum, the mortgagee was entitled to his costs (*q*). Leases were deposited by the bankrupt with the petitioner's testator, in 1842, without any written memorandum. In 1851, in arranging other matters, the petitioner, and also an agent of the bankrupt, signed a memorandum that the leases were to be delivered up by the petitioner, on payment of 200*l.* (the sum claimed as the mortgage money), with interest from that date. This was held a sufficient memorandum to entitle the petitioner to his costs (*r*).

Where the mortgage was created by a deposit of agreements for leases, with a written memorandum, and when the leases were obtained, they were deposited in lieu of the agreements, but without a memorandum, it was held a case of no written memorandum (*s*).

But where right to enforce contract on ground of part performance, want of written agreement will not deprive petitioner of costs;

nor where, by custom, no memorandum requisite;

Where there was sufficient part performance of a parol agreement for sale of an estate, entered into by the bankrupt to take it out of the Statute of Frauds, it was held, that the vendor seeking to give effect to his lien for unpaid purchase-money was entitled to his costs out of the estate (*t*). Where shares deposited with bankers, to secure the repayment of money advanced to pay for the shares, but without a memorandum of deposit, and evidence was adduced, that by the custom of business no memorandum was usual in such cases, the costs of the petition of the bankers to realize the shares were given as in the case of a deposit, with a written memorandum (*u*). But where the memorandum was drawn up entirely by the clerk of the mortgagee, and not signed by the bankrupt, it was not sufficient to entitle the mortgagee to his costs (*x*); and if there is a written memorandum, but it does not specify the purpose of the deposit of the deeds, it is considered as no

(*o*) *Ex parte Corlett*, 5 Jur. 555.

(*p*) *Ex parte Pigeon*, 2 D. & C. 118.

(*q*) *Ex parte Cobham*, 3 Dea. 609.

(*r*) *Ex parte Richards*, 1 Fon. B. C. 269.

(*s*) *Ex parte Anderson*, 3 De G. & S. 600.

(*t*) *Ex parte Cooper*, 3 M., D. & D. 717.

(*u*) *Ex parte Moss*, 13 Jur. 866; 3 De G. & S. 599; 18 L. J., Bank. 17.

(*x*) *Ex parte Emmerton*, 3 Dea. & C. 654.

memorandum (*y*) ; and it makes no difference as to the costs of a petition of an equitable mortgagee for sale, that his petition also prays for leave to bid ; but the mortgagee will in all cases pay the costs of a petition for the sole purpose of obtaining leave to bid (*z*). An attorney, who having title deeds of the bankrupt in his possession, claims as equitable mortgagee, but succeeds only as to his general lien as solicitor of the bankrupt, is nevertheless entitled to his costs (*a*). nor in case of solicitor having lien on title deeds in his possession.

Where the deposit with a memorandum was to secure the debt of two partners, and after the death of one it was extended by parol, to secure the separate debt of the survivor, who became bankrupt, the costs were apportioned between the joint and separate estates ; in the one case as a deposit with a written agreement, and in the other as a deposit by parol (*b*). Generally, the assignees are entitled to their costs out of the proceeds, although there is a written agreement, and the proceeds of the sale are not sufficient to pay the claim of the mortgagee (*c*) ; but if a petition for sale of an equitable mortgage is rendered necessary by the assignees, they cannot claim their costs out of the mortgaged premises, but only out of the estate (*d*). So, also, if assignees compel a party to petition to establish a claim upon the property which is free from doubt, they will have to pay the costs (*e*). Under the usual order for sale under an equitable mortgage, the assignees, having the conduct of the sale, are justified in taking the opinion of counsel on the conditions, and are entitled to have the costs allowed out of the proceeds of the sale, although the proceeds are insufficient to satisfy the claims of the mortgagee (*f*). Costs of assignees.

If the question raised by the petition be one of importance, a charge for consulting counsel previously to presenting the petition, a fee to counsel for drawing the petition, and a fee to a second counsel on the hearing, will be allowed on taxation (*g*). What fees allowed to counsel.

The court, having at the instance of the detaining creditor, refused with costs the application of the bankrupt for his release from custody on the ground of fraud, counsel's fees were allowed on taxation (*h*).

Where an issue is directed, the costs generally follow the

(*y*) *Ex parte Smith*, 1 M., D. & D. 165.
 (*z*) *Ex parte Berkeley*, 4 Dea. & C. 572 ; 2 Mon. & A. 54.
 (*a*) *Ex parte Hawley*, 1 Fon. B. C. 243.
 (*b*) *Ex parte Ford*, 3 M., D. & D. 457.
 (*c*) *Ex parte Stevens*, 7 Jur. 566.
 (*d*) *Ex parte Bate*, 4 Dea. 46 ; Mon.

& C. 58.

(*e*) *Ex parte Young*, Mon. & C. 599.

(*f*) *Ex parte Lewis*, 1 M., D. & D. 371.

(*g*) *Ex parte Ellis*, 8 Jur. 918 ; 3 M., D. & D. 600 ; 13 L. J., Bcy. 11.

(*h*) *Re Harrison*, 5 L. T., N. S. 403.

CHAP. XII.

Party served with petition, though his appearance unnecessary, will get his costs from petitioner.

verdict (*i*), but it is in the discretion of the court to grant them or not: and even where an action is directed to be brought, the party succeeding cannot sue out execution for the costs; the court directing the issue, still reserving to itself, in such case, the discretion of awarding these costs to the successful party or not (*j*). A petition is not necessarily dismissed with costs, because a previous petition for the same object has been so dismissed, if the dismissal of the prior petition was on a point of form (*k*). If the petitioner present two petitions against the same party, and involving the same points, and the respondents propose that the decision in the petition first presented should bind in the other; if the petitioner proceed in the second petition by filing affidavits, &c., the court will not give him any costs in the second beyond the time of the proposal (*l*). Though the appearance of a party is unnecessary, yet, if he has been served with the petition, he is entitled to his costs from the petitioner (*m*). On the hearing of a petition of a bankrupt to annul the adjudication, there being no creditors' assignee or petitioning creditor, a creditor who had proved his debt, and appeared to oppose, was allowed his costs although he had not been served with the petition (*n*). And where, on a petition of an equitable mortgagee for a sale, the same solicitor appeared for the petitioner and the trade assignee, the official assignee appearing separately, was allowed his costs (*o*); but legatees petitioning for leave to prove under the bankruptcy of the executor will not have to pay the costs of the assignees, although they are served; if the assignees appear, they will have their costs out of the estate (*p*). On a question between the creditors' assignees of a joint estate, and the inspector of the separate estate of one of the bankrupts, as to the right to monies in the hands of the official assignee, such assignee is entitled to his costs of a separate appearance (*q*).

Where a party to a petition asks for a favour or indulgence, the court will take care that the opposite party shall not be damnified by their granting it. Therefore, if a party wish to put off the hearing of a petition, or if the court, as a matter of indulgence, put it off, in order to allow an amendment, they generally do

- (*i*) *Ex parte Gulston*, 1 Atk. 293.
- (*j*) *Ex parte Gregory*, 1 Glyn & J. 177.
- (*k*) *Ex parte Hooper*, 1 Dea. & C. 117.
- (*l*) *Ex parte Scott*, 3 Dea. 75; 3 Mon. & A. 433.
- (*m*) *Ex parte Reid*, 1 Dea. & C. 322; *Ex parte Smith*, 4 Dea. 123; Mon. & C. 347; *Ex parte Smith*, Mon. & C. 598; *Ex parte Fairman*, 3 Dea. 470; Mon. & C. 125;

- Ex parte Catchpole*, Mon. & C. 640; *Ex parte Tarleton*, 2 M., D. & D. 189.
- (*n*) *Ex parte Barnett*, 15 Jur. 617; 4 De G. & S. 54.
- (*o*) *Ex parte Bromage*, 10 Jur. 974; De G. 375.
- (*p*) *Ex parte Bridgman*, 2 M., D. & D. 692.
- (*q*) *Ex parte Simpson*, 8 Jur. 1150.

so only on the terms of the party applying, or in fault, paying the costs of the day of the opposite party; but costs of the day are not always of course upon a petition standing over (*r*): and it may be necessary perhaps here to mention, that costs of the day must be applied for or ordered at the time; they cannot be applied for afterwards (*s*); nor even on the same day, if it appear that counsel was not instructed at the time when the order was made (*t*): and though it is not necessary to draw up an order for the costs of the day, yet there must be a demand made, or the nonpayment will not be a valid objection to the hearing of the petition when it comes on again (*u*).

Sometimes the costs are ordered to be paid out of the estate, particularly in case of the assignees, where they are put to expense in the fair and legitimate exercise of their duty (*x*). Petition to remove an assignee who had absconded, the petitioner was ordered to pay the costs, with liberty to prove for them in the event of any assets being got in (*y*). Costs, how provided for.

As to the liability of official assignees for payment of costs, see *post*, Chapter on Assignees.

A party served with notice of a motion, which is abandoned, is entitled to costs; so, also, if served with a notice of a motion which is of course (*z*). The costs of a notice of motion abandoned may be applied for after the day for which notice has been given (*a*). Where the costs are ordered to be paid out of the estate, and the assignees have assets in hand, application may be made for an order upon the assignees to pay the costs by a day to be named. Costs of parties served with notices of motion.

A bankrupt petitioning for leave to surrender after the time for surrendering has expired will, in general, be entitled to his costs out of the estate.

Costs in bankruptcy cannot be recovered in an action at law, unless there has been an express promise to pay them. On the other hand, where an adjudication is annulled at the cost of several petitioning creditors, if some of them pay the costs, the court has no jurisdiction in bankruptcy to order the rest of the petitioning creditors to contribute. If the party ordered to pay Costs in bankruptcy, when recoverable at law.

(*r*) *Ex parte Thompson*, 1 Mon. & A. 312.

(*s*) *Ex parte Green*, 1 Glyn & J. 188.

(*t*) *Ex parte Hill*, 2 Dea. 239.

(*u*) *Ex parte Leech*, 2 Glyn & J. 78; *Ex parte Clarke*, Mon. 503; 1 Dea. & C. 525.

(*x*) See *Ex parte Bonbonous*, 3 Mad. 23; *Ex parte Garbutt*, 2 Rose, 78; see *Ex parte Coles*, Buck, 256.

(*y*) *Ex parte Lewis*, 1 Fon. B. C. 67.

(*z*) *Ex parte Grimwood*, 2 Dea. 394; 3 Mon. & A. 293.

(*a*) *Ex parte Stone*, 2 Mon. & A. 503.

CHAP. XII.

the costs of a petition, is a prisoner in the Queen's Bench, the court can order him to be charged in execution for the costs under 1 & 2 Vict. c. 110, s. 18. (*And see further, as to enforcing obedience to an order for payment of costs, Chapter on Costs.*)

Affidavits filed, though not read, included in costs;

unless irrelevant.

Costs of preparing special case, part of costs of appeal.

What items are included in an order for costs will be seen in the *Chapter on Costs, infra*; but we may observe here, that all affidavits filed, although not read, are included in the costs, unless they are expressly excluded from being read at the hearing, in which case they are not included; and upon a suggestion made at the hearing that affidavits which have not been read are impertinent, the court will direct the officer, in taxing the costs, to disallow the costs of affidavits which in his opinion are irrelevant. The costs of preparing and settling a special case form part of the costs of appeal. If the officer of the court, in taxing costs, refuse to allow charges usually allowed, the court will order them to be retaxed; but if the items disallowed are not usually allowed, then a special application is necessary.

Order to be drawn up by registrar.

Motion may be made to vary minutes, but not if order drawn up; nor if made three months, though not drawn up, without rehearing petition.

The Order.—When the court has given judgment upon the motion or petition, the order thereupon is afterwards drawn up by the registrar from minutes taken at the time. An application may be made to the court, on motion, to vary the minutes, but not until they have been settled in the registrar's office (*b*). And minutes cannot be varied after the order is drawn up, and although drawn up after notice of motion to vary the minutes (*c*); no minutes are drawn up of an order to dismiss a petition with costs (*d*); and the court will not vary the minutes of an order which has been made more than three months; the petition must be reheard (*e*). So, also, if any essential alteration is required in the order, the court will not make it on a motion to vary minutes; there must be a rehearing (*f*). The order should be drawn up without delay; and, by rule 22, it shall not be necessary to recite petitions at length, but only the prayer thereof, in any order pronounced by the court thereon. A petition to revive a former order is of course, unless hardship or injury will arise from the revivor (*g*).

If the order require anything to be done by a party, he must be served personally with a copy of it, the original being shown

(*b*) See *Ex parte Vittery*, Mon. & M'A. 435.

(*c*) *Ex parte Bell*, 1 Dea. 690; 2 Mon. & A. 578.

(*d*) *Ex parte Sidebotham*, 3 Dea. 221; 3 Mon. & A. 495.

(*e*) *Ex parte Wilson*, 4 Dea. & C. 156.

(*f*) *Ex parte Soper*, 4 Dea. & C. 275; 2 Mon. & A. 58; *Ex parte Dolly*, 3 Dea. 51.

(*g*) *Ex parte Evans*, 3 Dea. 381; 1 Mon. & C. 92.

to him at the same time. If the order be for the payment of money, a demand of the money must be made of the party personally, by the person to whom it is to be paid, according to the terms of the order, or by some person deputed by him by power of attorney for that purpose: in which latter case the power of attorney must be shown at the time the money is demanded, and if not then paid, the usual four-day order may be obtained upon affidavit of demand and nonpayment (*h*): and a demand must be made for payment under this order, or the order for commitment thereon will be irregular (*i*). And where costs were directed to be paid to the bankrupt or his solicitor, a personal demand by the bankrupt alone was held sufficient to ground an application to commit (*k*). If the order for payment has been made on two persons jointly, the four-day order will not be made against one unless the other also has been brought into contempt (*l*). But if it appear that the party keeps out of the way, in order to avoid being served with the order, the court will, on motion, dispense with personal service, and allow of some other service being substituted for it; as, for instance, where it appeared by affidavit that an attorney and another were keeping out of the way, in order to avoid being served with an order in bankruptcy to pay money, the court ordered that service of the order at the office of the attorney should be deemed good service (*m*), or at the dwelling-house of a party evading service (*n*). But the motion must be supported by an affidavit that the party wilfully keeps out of the way to avoid service, and is not to be found (*o*). And an order *nisi*, for striking an attorney (who has no place of residence in this country) off the rolls, may by order be served at his last place of residence in this country (*p*); if the original order is for production of books, &c., the four-day order is obtained on the registrar's certificate of the nonproduction, which certificate must bear the same date as the four-day order (*q*); and if this new order is disregarded, an attachment or order of committal issues as of course, on motion to the court, and the party in contempt is taken into custody (*r*). If the contempt is nonpayment of money, the affidavit in support of the motion for committal must state that the party, or any person on

Money ordered to be paid must be demanded of the party liable, personally.

Four-day order on affidavit of demand and nonpayment.

Substituted service allowed on motion, if party absconds.

Motion must be supported by affidavit that party not to be found.

On neglect of four-day order, attachment issues on motion.

(*h*) *Ex parte Davison*, 1 Glyn & J. 227; *Ex parte Ferrers*, Mon. 513; *Ex parte Green*, 1 M., D. & D. 464.

(*i*) *Ex parte Dica*s, Mon. 215.

(*k*) *In re Diack*, 3 Dea. 53.

(*l*) *Ex parte Batten*, 1 M., D. & D. 82.

(*m*) *Ex parte Anderson*, Buck, 38.

(*n*) *Ex parte Batten*, *supra*.

(*o*) *Ex parte Blandy*, 4 Dea. & C. 518; 2 Mon. & A. 24.

(*p*) *In re Mark*, 4 Dea. & C. 28.

(*q*) *Ex parte Myers*, 4 Dea. & C. 579; 2 Mon. & A. 87.

(*r*) See *Ex parte Malachy*, 1 Mon. & A. 257.

CHAP. XII.

Attachment
not issued in
vacation, unless
party likely to
abscond.

his behalf, has not paid, and that the money is still due and owing; but this strictness is not required on the application for the four-day order (s). The attachment does not issue in the vacation unless in an urgent case, as where the party against whom the order is made is likely to abscond (t); and where the party is under commitment for nonpayment of costs, the court will not suspend the order, pending an appeal, except upon payment of the costs into court (u), but it was doubted whether the court could issue a *distringas* against a member of parliament to enforce an order (x).

This doubt, it is submitted, is now removed as regards costs by the 213th sect. of the Act of 1861 before cited, which provides for the recovery of costs as on a rule of any of the superior courts at Westminster; the doubt may perhaps remain as to enforcing other orders by *distringas*, but it is submitted that the jurisdiction conferred by the 1st sect. of the Act of 1861, and perhaps by the 6th sect. of the Act of 1849, would carry this power among others.

Party com-
mitted for
contempt may
petition for
discharge.

Summary
mode of en-
forcing orders
under sect. 226
of Act of 1861.

A party committed by the court for contempt may petition for his discharge; but if he fail to prove the invalidity of his commitment, his petition will be dismissed with costs (y).

All other modes of enforcing orders of the court were almost entirely superseded by the more summary mode afforded by the 266th sect. of the Act of 1849 now repealed, but it has been substantially re-enacted by the 226th sect. of the Act of 1861, which is as follows:—"If any person shall wilfully disobey any rule or order of the court, duly made for enforcing any of the purposes and provisions of this act, the court may, by warrant in the form contained in the Schedule (F.) to this act annexed, commit the person so offending to the Queen's prison, or to the common gaol of any county, city or place where he shall be found or where he shall usually reside, there to remain, without bail or mainprise, until such court, or the Court of Appeal in Chancery sitting in bankruptcy, shall make order to the contrary."

Under the 266th sect. in the Act of 1849, "if any person" was held to mean any person properly subject to the jurisdiction of the court, such as one of its officers, or a party or principal in a matter regularly before it, and claiming or submitting to its jurisdiction,

(s) *Ex parte Murray*, 1 Mon. & A. 475.

(t) *Ex parte Hunt*, 4 Dea. & C. 503; 2 Mon. & A. 18.

(u) *Ex parte Fox*, 2 Mon. & A. 18.

(x) *Ex parte Grimwood*, 3 Mon. & A. 293.

(y) *Ex parte Green*, 3 Dea. 700.

CHAP. XII.

nonpayment of money by a stranger ordered to pay, as, for instance, under sect. 123 of the Act of 1849, was only enforceable by civil process(*z*). A bankrupt had omitted to file accounts as ordered and his examination was adjourned *sine die* without protection: under these circumstances the court refused to make absolute a rule *nisi* obtained for a warrant of commitment against him under the 226th sect. of the Act of 1861 (*a*). It has been held, also, that this section cannot be used to enforce the performance by the bankrupt of a condition annexed to his order of discharge (*b*).

Extent to which sect. 226 of Act of 1861 will be applied.

Under the old law the Court of Review used to commit by warrant for contempt, and it was held that where a warrant of committal was issued against a party for noncompliance with an order of the court, and was lost, the renewal of the warrant was quite of course (*c*).

Commitment on warrant in execution of an order of court for contempt in the nonpayment of costs was held bad, the order not adjudging the party to be in contempt (*d*). The warrant "to remain until the further order of this court" is good (*e*).

Order of committal must adjudge party to be in contempt.

By rule 19 of General Order of 19th October, 1852, no warrant for the commitment of any person, pursuant to sect. 266 of "The Bankrupt Law Consolidation Act, 1849," for disobeying any rule or order of the court, shall be issued, unless notice of the intended motion for such warrant shall have been served personally upon the person to be committed two clear days at the least before the day of hearing such motion; or unless an order to show cause why such warrant should not be issued shall have been personally served upon such person four clear days at the least before the day named in such order for showing cause: provided, however, that in cases in which it shall be made to appear to the court, that the person intended to be committed is keeping out of the way and cannot be personally served with the notice of motion or of the order to show cause, it shall be lawful for the court to make an order directing substituted service of the notice or order to show cause, as may be best suited to the circumstances of the case; and service of such notice, or order to show cause, according to the directions of such order, shall be deemed to be as effectual as

Old practice under Act of 1849 required service of notice of motion to commit.

(*z*) *Ex parte Assignees of Piciotto*, 29 L. T. 26.

(*a*) *Re King*, 12 W. R. 282.

(*b*) *Re Yeo*, 12 W. R. 90.

(*c*) *Ex parte Giles*, 3 D. & Ch. 620.

(*d*) *Green v. Elgie*, 8 Jur. 187.

(*e*) *Ib.* See 5 Q. B. 99; 1 Dav. & M. 199; 14 L. J., Q. B. 162.

CHAP. XII.

if such service had been made personally. As it has been shown, the 266th sect. of the Act of 1849 is repealed, so that this order is no longer applicable in terms, but it is apprehended that until some new order is made, it will still govern the practice under the 226th sect. of the Act of 1861.

By 12 & 13 Vict. c. 106, s. 248, the provisions in an act passed in the session of parliament holden in the first and second years of the reign of her Majesty, and intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England," so far as the same relate to orders of the Lord Chancellor, or of the Court of Review therein referred to, in matters of bankruptcy, and the powers given by the same act to the Lord Chancellor and the said Court of Review in matters of bankruptcy, shall extend and be applicable to orders of the Lord Chancellor and of the Vice-Chancellor in matters of bankruptcy under this act (*f*).

Provisions of 1 & 2 Vict. c. 110, extended by sect. 214 of Act of 1861, to orders of Lord Chancellor and Court of Appeal under last act.

By sect. 214 of the Act of 1861, the provisions of the act of the session of parliament of the first and second years of the reign of her Majesty, chapter one hundred and ten, so far as the same relate to orders of the Lord Chancellor, or of the Court of Review, therein referred to, in matters of bankruptcy, and the powers given by the same act to the Lord Chancellor and the said Court of Review in matters of bankruptcy, shall extend and be applicable to orders of the Lord Chancellor and of the Court of Appeal in Chancery sitting in bankruptcy under this act.

This enactment seems only to give clear expression to what was in fact provided by the former enactments taken together.

Orders for payment of money, admitted due by person examined, to have effect of judgment of superior courts.

Orders for Payment of Money and Costs, and Execution thereon.]
— An order of the court for payment of a debt admitted to be due to a bankrupt's estate by a person examined under the stat. 12 & 13 Vict. c. 106, s. 123, shall have the effect of a judgment in her Majesty's superior courts of law, and may be enforced accordingly. And by s. 213 of the Act of 1861 cited ante, p. 770, costs may be recovered as on a rule of one of the superior courts.

Orders for payment of money and costs

By General Order, 19th October, 1852, rule 100, every order for payment of money and costs, or either of them, shall be signed by

(*f*) See 1 & 2 Vict. c. 110, ss. 17, 19.

CHAP. XII.

the commissioner making such order, and be sealed with the seal of the court, and be countersigned by the registrar, or one of the registrars, and shall be forthwith filed with the proceedings; and r. 101, every order for payment of costs shall contain a direction that the party in whose favour the order is made may enforce the same by issuing execution.

to be signed
by commis-
sioner, sealed,
&c.

By rule 102, the costs directed by any such order to be paid shall be taxed on production of an office copy of such order, and the allocatur being duly stamped, shall be signed and dated by the master or registrar taxing the costs.

By rule 103, in all cases where writs of execution may be issued out of the Court of Bankruptcy to enforce an order for payment of money and costs, or either of them, the same shall be sealed with the seal of the court, and be issued by the chief registrar, on production of an office copy of the order for payment and (where the order comprises costs) on production of the allocatur.

Writs of exe-
cution to be
sealed, &c.

By rule 109, on the filing of a return to a former writ that goods have been seized but not sold, a writ of venditioni exponas may be issued.

By rule 110, on execution of the writ, or before execution if so ordered by the Court of Bankruptcy in London, every writ shall be forthwith returned to the said Court of Bankruptcy, by filing the same (with the proper return indorsed) with the chief registrar, by whom such writ and return shall be filed of record, and the fact and date, and substance of the return, shall be forthwith entered in the præcipe book.

Writs of exe-
cution to be
returned to
chief registrar,
and filed of
record.

By rule 111, on satisfaction by levy or otherwise, in whole or in part, the party on whom the order is made may, on delivery of a search stamp, cause such satisfaction to be entered on the order for payment; and r. 112, unless such satisfaction shall appear by the return of the writ, or shall be admitted by the party in whose favour the order shall be made, or his solicitor, application must be made to the Court of Bankruptcy, wherein the proceedings and order shall be filed, to order such entry of satisfaction.

By rule 113, the Court of Bankruptcy shall, on proper application, exercise such and the same powers of amendment of writs of execution, and the indorsements thereon, and the præcipes thereof, in cases where such powers may be reasonably exercised, and on the same terms as to payment of costs or otherwise as the superior courts of Westminster are in the habit of exercising. (*For the Forms of the Writs, see post, Appendix*).

CHAP. XII.

Upon what facts or evidence rehearing allowed.

Mistaken allegations no ground for rehearing petition.

No order reheard or appealed from for costs only.

Petition cannot be reheard till costs paid ;

nor until order of former hearing drawn up.

Supplemental petition for new facts.

Petition of rehearing need not state

Rehearings.]—A matter may be reheard upon facts or evidence discovered since the hearing, but not upon the discovery of a fact which by due diligence might have been known at the hearing, and the rehearing should take place within the time limited for the hearing of the appeal. A rehearing has been granted upon the suggestion of counsel that material considerations affecting the case had not been brought to the notice of the court upon the original hearing (*g*).

Where a party allows to remain in his petition an allegation, which expresses his consent to a certain act, and, subsequently to the adjudication upon the petition, discovers that such allegation was a mistake, the court will not on that ground rehear his petition, although the petitioner had not supported such allegation by affidavit (*h*). An order cannot be reheard or appealed against for costs only (*i*); and if an order, on the petition of assignees, for annulling with costs, does not, through mistake, include the assignees' expenses of prosecuting the bankruptcy, the error cannot be rectified on a petition of rehearing (*k*); but where the question was not as to the personal payment of costs, but as to whether they were payable out of a particular fund, it was held that it might be made the subject of a petition for rehearing (*l*). A petition dismissed with costs will not in general be reheard until the costs are paid, although there has not been any actual demand for payment (*m*); but this rule is not, of course, rigid, for it would be in the power of the successful party to prevent a rehearing by the simple course of his not having his costs taxed; and a petition cannot be reheard unless the order of the former hearing is drawn up (*n*). There is no time limited for rehearing in bankruptcy (*o*); and the application to rehear, and actual rehearing, come on together: there is no previous order to rehear (*p*). If the party relies on new facts, they should be put into a supplemental petition, and the original and supplemental petitions be set down to come on for hearing at the same time (*q*). The petition of rehearing need not state the ground upon which the appeal or rehearing is sought;

(*g*) *Ex parte Turner*, 2 De G., M. & G. 927.

(*h*) *Ex parte Eyre*, 6 Jur. 44; 2 M., D. & D. 84.

(*i*) *Ex parte Burnell*, 1 Mon. & A. 38; 2 Dea. & C. 640.

(*k*) *Ex parte Burnell*, supra.

(*l*) *Ex parte Baines*, 1 Glyn & J. 259.

(*m*) *Ex parte Mudie*, 2 M., D. & D. 669.

(*n*) *Ex parte Jenkins*, 1 Dea. & C. 222; Mon. 513; but see *Ex parte Eyre*, 2 M., D. & D. 84; *Ex parte Turner*, supra.

(*o*) *Ex parte Greenwood*, 1 Mon. & A. 66; *Ex parte Simpson*, 1 Mon. & A. 565.

(*p*) *Ex parte Thompson*, 3 Dea. & C. 617.

(*q*) *Ex parte Cunningham*, 3 Dea. & C. 71.

but if it does, the party is limited to the special ground stated (r). CHAP. XII.

A petition for rehearing does not require a certificate of rehearing signed by counsel (s). grounds for rehearing.

As to appeals see ante.

(r) *Ex parte Greenwood*, 1 Mon. & A. 66. (s) *Ex parte Pott*, 7 Jur. 159.

CHAPTER XIII.

ANNULLING ADJUDICATION.

CHAP. XIII.

Adjudication annulled on bankrupt's showing insufficiency of petitioning creditor's debt, trading or act of bankruptcy.

Under Act of 1861 like provision on adjudication under judgment debtor summons.

IF the petitioning creditor fails in due time, regard being had to the 96th section of the Act of 1861, and in the cases to which sect. 70 applies, to that section, to show a good *primâ facie* case for adjudication, either through not prosecuting his petition, or by want of evidence to support it, and no other creditor's debt is under the 96th section substituted, the petition will of course be dismissed, and no adjudication of bankruptcy will be made upon it; but if he, or any substituted creditor, succeeds in making a *primâ facie* case, then, by sect. 104 of the Act of 1849, if the bankrupt shall within seven days, or such extended time not exceeding fourteen days from service of the duplicate adjudication as the court may grant for that purpose, show to the satisfaction of the court that the petitioning creditor's debt, trading and act of bankruptcy upon which such adjudication has been grounded, or any or either of such matters, are insufficient to support such adjudication, and upon such showing no other creditor's debt, trading and act of bankruptcy sufficient to support such adjudication or such of the said last-mentioned matters as shall be requisite to support such adjudication, in lieu of the petitioning creditor's debt, trading and act of bankruptcy or any or either of such matters, which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the court, the court shall thereupon order the adjudication to be annulled.

By sect. 84 of the Act of 1861, a similar provision is made in the case of an adjudication on judgment debtor summons. (*See ante*, p. 151.) It is apprehended that though the old section is left still to define, so far as legislative enactment is concerned, what shall be the ground on which cause may be shown against the adjudication, the alleged bankrupt would yet not be confined to those grounds, except in cases which would have fallen within the old law. In cases which could only fall under the later act, it is presumed he might show the non-performance of any of the conditions rendered necessary by the 70th section, or under the 90th section that the debt had not been contracted since the passing of the act. (*See ante*, pp. 135 *et seq.*) It was held under the former law that the registrar, sitting for the commissioner, under sect. 27 of the Act of 1849, had no jurisdiction under the 104th sect. to annul an adjudication.

cation, but that he might enlarge the time for showing cause against it (a) : this view seems confirmed by sect. 52 of the Act of 1861. Annulling adjudications is of two kinds : “ annulling,” properly so called, *i. e.*, where the adjudication ought not to have been made ; and “ superseding,” which is now included in the term “ annulling,” where, from matter occurring after the adjudication, it has become proper that the bankrupt should be reinstated in his position as one who has not been bankrupt, and that his property should be taken out of the custody and administration of the court.

Annulling and superseding adjudications.

An adjudication may be annulled, therefore, on any ground, which, if shown and proved at the hearing of the petition, would have been ground for dismissing the petition, and such grounds may be either legal or equitable (b), as the Court of Bankruptcy is a court of equity as well as of law, and may go to the jurisdiction of the court, or the capacity of the person petitioning, as well as to the nature of the demand.

Grounds for annulling same as for dismissing petition on hearing.

Questions as to the jurisdiction, perhaps, ought first to be considered as being logically the first objections which should be taken. By far the most common, and, therefore, the most important of these formerly was the objection that the alleged bankrupt was not a trader (c). This, though it may still in many cases be a good ground for annulling an adjudication, is no longer an objection to the jurisdiction of the court, but becomes, since the Act of 1861, a consideration in determining whether an act of bankruptcy has been committed or no. The conditions, however, defined in clauses numbered 1, 2, 3 and 4 of the 70th sect. are all, in case the alleged bankrupt be not a trader, necessary conditions precedent to the jurisdiction of the court ; so that, if, on showing cause to obtain the annulling of an adjudication, it be shown that the alleged bankrupt was not a trader, and also that any failure has been made in complying with these conditions, the bankruptcy should be annulled for want of jurisdiction.

Objections to jurisdiction.

Again, if the act of bankruptcy, though in fact committed, has not been committed within the realm, this, except in the case expressly provided for by the 67th sect. of the Act of 1849, of a trader’s executing a fraudulent assignment, is a valid objection to the jurisdiction of the court (d) ; and it would seem, therefore, that if a person not a trader should execute such an assignment, unless

Conditions specified in first four clauses of sect. 70 must be complied with.

Act of bankruptcy committed out of realm, except execution of fraudulent assignment, no ground for adjudication.

(a) *Ex parte Washbourne*, 4 De G. & S. 193.

Page, 1 Glyn & J. 100.

(b) *Ex parte Johnstone*, 4 De G. & S. 204 ; 15 Jur. 739 ; *Ex parte Gray*, 4 D. & C. 778 ; 2 M. & Ay. 283 ; *Ex parte Austen*, 1 M., D. & D. 247 ; *Ex parte*

(c) *Cooke*, 515 ; see *Re Lewis*, 2 Rose, 59.

(d) *Ex parte Smith*, Cowp. 462 ; *Ingliss v. Grant*, 5 T. R. 530 ; *Norden v. James*, Dick. 533.

CHAP. XIII.

he was within the realm at the time of his execution thereof, he could not properly be adjudicated a bankrupt, and might, if he were adjudicated, have his bankruptcy annulled, notwithstanding that the execution of a similar instrument in England would bring him within the 70th sect. of the Act of 1861.

English Court of Bankruptcy has no jurisdiction over trader resident and carrying on business in Ireland.

It appears, too, that if a trader reside and *carry on business* exclusively in Ireland, although he may in fact have committed an act of bankruptcy in England, the court in England has no jurisdiction, and that an English adjudication should, if made, be annulled; it will certainly be ignored by the court in Ireland (*e*). This, however, depends on the express words of the Irish Bankrupt Act, 20 & 21 Vict. c. 60, s. 31. We are not aware whether this point has ever actually been raised in the Court of Bankruptcy in England, but circumstances will, probably, sooner or later, cause it to be raised there. There seems little doubt that the Irish decisions on the Irish statute are sound, but it must be observed that that statute applies in this respect to traders only; and it seems doubtful whether a like law is applicable to the case of a person, not in trade, coming from Ireland to obtain the advantages of the Act of 1861 in England, and filing a petition against himself here, to the great inconvenience of his creditors in Ireland (*f*).

Residence for six months. Foreign and English jurisdiction. Concurrent practice under 88th sect. of Act of 1861.

Further grounds of objection to jurisdiction, prior bankruptcy of bankrupt, without having obtained certificate, &c.

Where the creditors are principally resident abroad, and foreign proceedings in bankruptcy or insolvency are pending, the court here will adjourn the examination *sine die*, with liberty to the bankrupt to apply when the foreign proceedings are completed (*g*).

It has been held another ground of objection to the jurisdiction, that the alleged bankrupt has been bankrupt already, and has not obtained his certificate or order of discharge, or having been already bankrupt or having taken the benefit of the insolvent acts, or having compounded with his creditors, has become bankrupt under 6 Geo. 4, c. 16, before the adjudication now objected to, and has under such bankruptcy failed to pay fifteen shillings in the pound (see sect. 127 of the last-mentioned act). Under such circumstances it has been held, that, as there is nothing on which the new adjudication could by possibility operate, the court had no jurisdiction to adjudicate, and any such adjudication was null and void (*h*), subject, however, to this, that the court by superseding the former adjudication, could give itself jurisdiction to adjudicate;

(*e*) *Re Rogers*, 9 Ir. Ch. 150; *Re Sanderson*, 11 Ir. Ch. 421.

(*f*) See *Re Bianconi*, 9 L. T., N. S. 847.

(*g*) *Re Behrends*, 13 W. R. 500; *Ex parte Gibson*, *Re Patrick*, 13 W. R. 530.

(*h*) *Martin v. O'Hara*, Cowp. 823; *Ex*

parte Martin, 15 Ves. 114; *Till v. Wilson*, 7 B. & C. 684; *Re Chambers*, 3 M. & Ay. 294; 2 Dea. 494; *Ex parte Frith*, Fonb. 233; *Re M'Kibben*, 31 L. T. 382; see ante, *Adjudication; Who may be Bankrupt*.

and if the new adjudication should appear likely to prove more beneficial to the creditors, the court has often acted in this way (*i*); in fact, it was almost of course to do so, if the claimants under the new adjudication would pay 20s. in the pound to the creditors under the former (*j*); it was held also, that a second fiat, sued out pending another, was not void on that account, if the first had not been acted upon, and no appointment of assignees had taken place under it, so as to divest the bankrupt of the property (*k*). In some cases the court has been in the practice of impounding one of the fiats in preference to annulling it, as thereby effect was given to that fiat which it was most advantageous to the creditors should be in operation, at the same time that proceedings which had taken place under the one sought to be annulled, and which it is proper should be confirmed, would not be invalidated. This is effected by an application to the senior commissioner. Where a commission had been issued twelve years, under which the bankrupt did not obtain his certificate, and then a fiat issued, upon which the commission was impounded, the court refused to deliver out the commission so impounded, to enable a creditor to prove his debt, who had neglected to prove while the commission was in operation (*l*). However, the whole of the law on this matter has been doubted, and it has been held that a new adjudication against an uncertificated bankrupt may be maintained without superseding or annulling the first (*m*).

One of two
fiats sometimes
impounded.

It may here be remarked that the rights of the assignees under a fiat, under which 15s. in the pound has not been paid, given by 6 Geo. 4, c. 16, s. 127, were not taken away by the repeal clause in the Act of 1849 (*n*), and, probably, have not been taken away by the repeal clause in the Act of 1861, whose terms are very similar.

Assignees' rights under 6 Geo. 4, c. 16, s. 127, not repealed by Act of 1861, *quære*.

Although, as has been noticed, any breach in the conditions of the 70th section of the Act of 1861, in the case of a person not in trade, may form an objection to the jurisdiction of the court, it would seem that the direction in the 90th section of the Act of 1849, and in the 80th section of the Act of 1861, that a petition should be presented in the court of the district in which the bankrupt has resided or carried on business for six months next before the filing of the petition is directory only; and, therefore, though

Quære, provision in sect. 80 of Act of 1861 directory only.

(*i*) *Ex parte Lees*, 16 Ves. 472; *Ex parte Rhodes*, 15 Ves. 539; and see 1 V. & B. 163; 3 Id. 97; *Ex parte Poulden*, 16 Ves. 472; *Ex parte Crew*, Id. 236; *Ex parte Martin*, 15 Ves. 114; *Ex parte Cridland*, 2 Rose, 164; 3 V. & B. 94; *Ex p. Devas*, Dea. & C. 366; 1 Mon. & A. 420.

(*j*) *Ex parte Brown*, 2 Ves. jun. 67.

(*k*) *Warner v. Barber*, 2 Moore, 71; and see *Ex parte Bullen*, 1 Rose, 134; *Ex parte Mason*, Id. 423.

(*l*) *Ex parte Martin*, 1 Dea. 44.

(*m*) *Morgan v. Knight*, 12 W. R. 428.

(*n*) *Re Birch's Legacy*, *Bissell's Will*, 2 K. & J. 328; 25 L. J., Ch. 323; 2 Jur., N. S. 370.

CHAP. XIII.

an objection that the adjudication was obtained in a wrong court would probably be held a reason for annulling, if it were shown that another petition had been presented to the proper court, or if no inconvenience would follow from the annulling, it seems more a matter of discretion than of duty in the court to annul in such a case (*n*).

The jurisdiction of the county courts to entertain petitions for adjudication has already been commented on.

Errors in three day statement.

If there are material errors in the statement required by sect. 93 of the Act of 1861, the petition must be dismissed (*o*): and if adjudication has been made in such case it will be annulled, even after choice of assignees (*p*).

Objection showing act of bankruptcy not committed, fatal to adjudication.

Any objection which shows that the act of bankruptcy on which the adjudication is founded was not in fact committed or was not legally an act of bankruptcy, will of course be fatal to an adjudication (*q*); and as to what are acts of bankruptcy, *see ante*.

Or that petitioning creditor's debt not due both at law and in equity.

So in like manner will an objection showing that the petitioning creditor's debt was not legally due, even though good in equity, or not due in equity, even though good at law, or any other objection which shows that the debt alleged is not a good petitioning creditor's debt (*r*). Under this head there formerly fell also some objections to the capacity of the person, as that the alleged bankrupt was a *feme covert* (*s*) or that the bankrupt was an infant (*t*); objections which are also available against the trading. The latter is, however, now no fatal objection to the capacity of the person to become bankrupt, though it may be so to the validity of the petitioning creditor's debt, &c. Infancy, however, might be rebutted so far as the debt was concerned, by showing that it was contracted for necessities; and it has been held also, that where an infant held himself out to the world as an adult and *sui juris*, and traded as such, and contracted debts to a large amount, during the two years preceding the suing out of the commission against him, his petition to supersede the commission, on the ground of his being an infant, was dismissed (*u*); so, also, where the bank-

Objections grounded on invalidity of petitioning creditor's debt owing to disability of contracting party.

Infant's petition to supersede, dismissed in certain cases.

(*n*) *Ex parte Bunny*, 1 De G. & J. 309; 3 Jur., N. S. 1141; *Anon.* Fonb. 51; *Re Irwin*, lb. 27; and see *ante*, *Petition for Adjudication*.

(*o*) *Ex parte Henderson*, 11 L. T., N. S. 428.

(*p*) *Re Tyrie*, 13 W. R. 953.

(*q*) *Ex parte Burgess*, Buck, 233; *Ex parte Foster*, 1 Rose, 49; *Ex parte Norris*, 1 Glyn & J. 233; *Ex parte Smith*, 1 Rose, 147.

(*r*) *Ex parte Page*, 1 Glyn & J. 100; *Ex parte Hylliard*, 1 Atk. 146; *Ex parte*

Dewdney, 15 Ves. 479; *Ex parte Barwis*, 6 Ves. 601; *Ex parte Heywood*, 13 Ves. 67; *Barnaby's case*, 1 Stra. 653; and see *Ex parte Baglehole*, 1 Rose, 271; 18 Ves. 525; *Ex parte Paddy*, 3 Mad. 141.

(*s*) *Ex parte Mear*, 2 Bro. 265; *Cooke*, 47.

(*t*) *Ex parte Sydebotham*, 1 Atk. 146; *Ex parte Moule*, 14 Ves. 603.

(*u*) *Ex parte Watson*, 16 Ves. 265; *Ex parte Unity Joint Stock Bank, Re King*, 4 Jur., N. S. 1257; 31 L. T. 124, 243.

rupt on the occasion of his marriage, a year before the fiat issued, made an affidavit that he was of age, his petition to annul, on the ground of his infancy, was dismissed (*v*); but where the infant was of the age of sixteen, and took an active part in his father's business, and his name was painted over the door of the house of business, as a partner with his father, this is not such a holding forth as to preclude the infant from annulling a fiat, issued against him after he came of age, upon a debt contracted during the infancy (*x*).

Where the petitioning creditor at the time his debt was contracted knew of the infancy, the court, on the petition of the bankrupt, annulled the fiat (*y*). (*See ante, Who may be Bankrupt; also, Petitioning Creditor's Debt.*)

Petitioning creditor's petition for adjudication dismissed, if aware of infancy.

So coverture might be rebutted by showing that the alleged bankrupt was a trader within the custom of the city of London, and that the debt was contracted in that capacity (*z*); but questions of this kind are questions whether a debt be due or not, and are beside the purpose of this work.

Feme's coverture, if in city of London, no disability.

On an application by the bankrupt himself to annul for want of legal requisites, the onus of supporting the adjudication is on the respondents (*z*).

Application of bankrupt to annul for want of legal requisites, onus on respondents.

Even though the requisites to an adjudication may be legally sufficient, yet the court has jurisdiction to annul on any equitable grounds, as that any of the legal requisites have been procured to be done on a contract or understanding that no petition should be founded on them or obtained fraudulently or the like (*a*).

Adjudication, sufficient legally, annulled on equitable grounds.

Even though the legal requisites are in fact capable of proof, yet if the petitioning creditor is legally or equitably estopped from proving any of them, this fact may often be sufficient ground for annulling the adjudication: thus, where the petitioning creditor is a party to (*b*), or has acted under (*c*), the deed constituting the act of bankruptcy. (*And see ante, Acts of Bankruptcy by Fraudulent Conveyance.*)

Legal or equitable estoppel of petitioning creditor.

This doctrine, however, is applicable fully as often in support of an adjudication when made, as against it; as if the person petitioning to annul is estopped from denying any of the legal requisites, his petition will be dismissed, even though in fact the requisites may have been wanting.

Principle applicable to person petitioning to annul.

(*v*) *Ex parte Bates*, 2 M., D. & D. 337.

204; 15 Jur. 739.

(*x*) *Ex parte Lees*, 1 Dea. 705.

(*b*) *In re Cook*, 4 Dea. 82; M. & C.

(*y*) *Ex parte Hehir*, 3 Dea. & C. 107.

349; see also next cases.

(*z*) *Ex parte Welden*, 3 Dea. 240; 3 M. & Ay. 493.

(*c*) *Ex parte Fernandes*, 1 M., D. & D. 114; see also *Ex parte Payne*, De G.

(*a*) *Ex parte Johnstone*, 4 De G. & S.

534; 11 Jur. 568.

CHAP. XIII.

Trustee of deed executed by infant for benefit of creditors.

Admission of bankrupt as to trading ;
and as to validity of petitioning creditor's debt.

Parties to fraud may be heard against their own act.

Clear evidence of invalidity required to annul adjudication.

So, also, a trustee under a deed of assignment for the benefit of creditors cannot petition to annul on the ground of the infancy of the bankrupt, at the time when he executed the trust deed (*e*).

A creditor, who has successfully opposed the discharge of a bankrupt under the Insolvent Debtors Act, on the ground of his being a trader, cannot afterwards petition to annul a fiat sued out by the insolvent himself, on the ground of want of trading (*f*). Where the evidence of the trading is insufficient, yet, if the bankrupt has admitted to the petitioning creditor that he was a trader, the court will not annul (*g*). So, where the petitioning creditor's debt was an attorney's bill, and shortly after the fiat issued the bankrupt took the benefit of the Insolvent Debtors Act, and inserted the amount of the attorney's bill in his schedule, it was held, that the bankrupt was not entitled to an order to tax the attorney's bill, with the view of annulling the fiat (*h*).

So the court refused to annul on the petition of the petitioning creditors, on the ground merely that one of them was an infant (*i*), although it would do so on the petition of the bankrupt (*j*). But in some cases a person who is himself privy to a fraud may be heard against his own act either for the purpose of supporting or annulling an adjudication (*k*). Thus, where a party to a composition deed has privately obtained a larger sum than the other creditors, he may show the fraud for the benefit of the others to support an adjudication (*l*); *à fortiori*, if the fraud is that of another person.

So A. had sued out a fiat, and B., another creditor, proposed to him to abandon the fiat and consent to an arrangement by deed to which A. agreed; B. afterwards discovered that A. was fraudulently contriving to obtain a larger share than the other creditors, and thereupon took out a fiat himself, it was held that he was entitled so to do, and the court refused to annul his fiat (*m*).

The court is slow to annul an adjudication which may be beneficial to the creditors, unless it be very clearly shown that it is legally invalid and not to be made good, mere doubt as to

(*e*) *Ex parte Addison*, 3 Dea. 54; 3 Mon. & A. 434.

(*f*) *Ex parte Mitchell*, De G. 257; 15 L. J., By. 8; 10 Jur. 188.

(*g*) *Ex parte Bailey*, 2 M. & Ay. 86.

(*h*) *Ex parte Gingell*, 2 D. & Ch. 546.

(*i*) *Ex parte Potts*, 1 M., D. & D. 331.

(*j*) *Ex parte Morton*, Buck, 42; see also *Ex parte Kirk*, 15 Ves. 464.

(*k*) See remarks of Lord Eldon, in *Ex parte Kirk*, *supra*.

(*l*) See next cases.

(*m*) *Ex parte Hallowell*, 3 Dea. 278; 3 M. & Ay. 538; see *Mare v. Sandford*, 1 Gif. 288; 5 Jur., N. S. 1339; *Mare v. Warner*, 3 Gif. 100; 7 Jur., N. S. 1228; *Mare v. Earle*, 3 Gif. 108; 7 Jur., N. S. 1230.

Usual course of court, to direct issue as to fact.

the validity of the legal requisites will not induce the court to annul (*n*); the course it usually adopts in a case of any doubt, where the bankrupt himself is the applicant, is to retain the petition, allowing the bankrupt to bring an action to try the validity of the adjudication and requiring the opposing party who is generally the petitioning creditor to enter an appearance and plead within a given time, and in default of his so doing, or on his failing to support the adjudication at law, then to allow the application to annul (*o*); but even in such cases it does not hold itself absolutely bound to annul on the verdict of a jury, though if there be no reason to suspect unfairness in obtaining the verdict, it will generally do so (*p*).

And where there had been two verdicts at law against the fiat for want of a petitioning creditor's debt, but there was reason to suspect that they were obtained by the artful contrivance of the bankrupt, and by collusion with the petitioning creditor, the court refused to annul (*q*).

Verdicts at law not conclusive, if fraud suspected.

The court has in like manner refused to annul without actual proof of the want of legal requisites, and will not take the consent of the petitioning creditor in lieu of proof (*r*).

Want of legal requisites.

Where the course above pointed out is not feasible, as, for instance, where the bankrupt himself supports the adjudication and the petitioning creditor applies to annul, or where the adjudication though bad may be made good, the court will still often hesitate to annul, unless it is convinced that the annulling will benefit the creditors generally; in such case it commonly orders the petition to annul to stand over in order to allow time for an adjudication free from doubt to be applied for, or the doubts, if in matter of fact, to be resolved one way or other, and in the meantime proceedings in the adjudication objected to will be stayed (*s*): thus, where the validity of the petitioning creditor's debt was doubtful, the court ordered a petition to annul to stand over to give time for an application to substitute a new debt (*t*), and if it thinks that the creditors will not be benefited by annulling, and the parties interested are willing to act under the adjudication at their own

Where bankrupt supports adjudication, or adjudication may be made good, petition to annul ordered to stand over.

(*n*) *Ex parte Bower*, 1 De G., M. & G. 468.

(*o*) See *Ex parte Watson*, 5 De G., M. & G. 396; *Ex parte Wightman*, 12 Jur., 241; *Ex parte Wollheim*, 32 L. J., Bcy. 26; 7 L. T., N. S. 581; 1 N. R. 147; 11 W. R. 128.

(*p*) *Ex parte Munk*, 1 Mon. & A. 612; *Ex parte Mackintosh*, 3 Dea. 9; 3 Mon. &

A. 365.

(*q*) *Ex parte Munk*, 2 Dea. 444; 3 Mon. & A. 252.

(*r*) Anon., 9 W. R. 199; 3 L. T., N. S. 632.

(*s*) *Ex parte Magnus*, 2 M., D. & D. 604.

(*t*) *Ex parte Taylor*, 6 De G., M. & G. 737; *Ex parte Harland*, 1 Dea. 75; 2 M. & Ay. 723.

CHAP. XIII.

Interest of general body of creditors, to prevent annulment, must be equitable as well as legal.

No adjudication on act of bankruptcy of more than twelve months' date before petition.

Annulment of such adjudication if made.

Annulment of adjudication made on debtor's petition, where creditors consent, after discharge.

What the order in such case to contain.

Fiats annulled for misdescriptions of bankrupt.

risk, and it seems that no better adjudication can be made in such a case also, the court has refused to annul at the instance of the petitioning creditor (*u*).

The interest of the creditors, which is regarded by the court in supporting an adjudication apparently invalid for the want of legal requisites, must be of such a kind as they have an equitable right to; so that where goods had been left by a creditor in the order and disposition of his debtor, but without fraud, which goods, if the bankruptcy of the debtor could be supported, would be available for the general body of creditors, the court held that the interest of the creditors generally was no good ground for refusing the petition of the owner of the goods to annul the bankruptcy for want of the legal requisites (*x*).

Formerly, an adjudication used often to be annulled, though founded on an act of bankruptcy actually committed, if it could be shown that before the time of its commission another act of bankruptcy had been committed while the petitioning creditor's debt was due, as the relation of the bankruptcy was to the date of the act of bankruptcy on which it was founded, and the creditors might therefore be injured by a bankruptcy not relating far enough back; but by the 88th sect. of the Act of 1849, no adjudication of bankruptcy shall be deemed invalid by reason of any act of bankruptcy prior to the debt of the petitioning creditor, provided there be a sufficient act of bankruptcy subsequent to such debt.

It has been shown already, also, that by the same section no adjudication can be founded on an act of bankruptcy committed more than twelve months before the filing of the petition; and if it could be shown that an adjudication had been made on an act of bankruptcy, which, in fact, had been committed more than twelve months before the date of such petition, such an adjudication would be annulled. The court may, with consent of the creditors, annul an adjudication obtained on a debtor's own petition, after he has obtained his order of discharge (*y*). The order in that case ought not to be made without providing that the official assignee shall be paid what may be due to him, and an order should be made concurrently on the accountant for a re-transfer of the money in his hands to the bankrupt.

For certain irregularities, also, the court has annulled fiats; as, where the bankrupt was misdescribed in the fiat, and the misdescription was material, as where he was described of "The Sun Wharf,

(*u*) *Ex parte Leonard*, 3 De G. & S. 486; 21 L. J., Bcy. 26.
624.

(*y*) *Ex parte Newall*, 11 L. T., N. S.

(*x*) *Ex parte Bean*, 1 De G., M. & G. 782.

London and Wolverhampton," and he had no residence or establishment at Wolverhampton (*z*); or where his last place of trading was given, but the place where he was chiefly known as a trader was omitted (*a*); and where the description was of "Surrey Row, Blackfriars," and the bankrupt had kept a lunatic asylum at Edmonton and Newington for nine years previously to the issuing of the fiat (*b*); or where the description was "late of —," omitting the place where he had carried on business for the last twelve months (*c*); or where the bankrupt was described of the place of his residence, but not of the place of trade (*d*), the court, upon petition, annulled the fiat; but if he were as well known by the description given of him in the petition, it would not be annulled (*e*). Where the bankrupt was described in the commission by the name of "Wicks," by which he had traded, his real name being "Knox," and a fiat was subsequently issued by his right name, the commission was preferred to the subsequent fiat (*f*); and where the parish was described as in a certain county, and in fact it extended to the adjoining county in which was the shop of the bankrupt, the fiat was supported upon an affidavit that there was no other person of the name and trade of the bankrupt in the parish (*g*); or where the misdescription was so slight that no creditor was likely to be deceived by it (*h*). And where the bankrupt was described by the name of John G., when his real name was John Christian G., the court refused to annul on the petition of the bankrupt, who had been examined before the commissioners without mentioning the objection (*i*). To establish a case of misnomer, it is not sufficient to prove that the bankrupt was baptized by and adopted another name, but it must be shown that he was not generally known by the name as stated in the fiat or petition (*k*); and a fraudulent misdescription of the bankrupt is sufficient ground for annulling the fiat or adjudication (*l*); and though the bankrupt wrote to the creditors to apprise them that he was the object of the fiat (*m*); and to annul for insufficient description, it was not necessary to show actual fraud or mischief sustained (*n*), it was suffi-

but if description in petition sufficient, no annulment.

To annul for misdescription, not necessary

(*z*) *Ex parte Beckwith*, 1 Glyn & J. 20; see *Ex parte Carrington*, 1 Atk. 206.

(*a*) *Ex parte Parrey*, 2 Glyn & J. 225.

(*b*) *Ex parte Shadbolt*, Mon. 89.

(*c*) *Ex parte Lewis*, 3 M., D. & D. 93; 7 Jur. 244.

(*d*) *Ex parte Beadles*, 2 Glyn & J. 243; *Ex parte Wallis*, 1 Dea. 496.

(*e*) *Ex parte Horsley*, 2 Mad. 11; *Ex parte Magee*, 2 Dea. 558.

(*f*) *Ex parte Sambourne*, 2 Dea. & C. 22.

(*g*) *Ex parte Woodhead*, De G. 99.

(*h*) *Ex parte Mills*, 1 Mon. & A. 310; 3 Dea. & C. 606.

(*i*) *Ex parte Gilligan*, 1 M., D. & D. 144.

(*k*) *Ex parte Richards*, 2 M., D. & D. 493.

(*l*) *Ex parte Dart*, 2 Dea. & C. 543.

(*m*) *Ex parte Tanner*, 8 Mon. & B. 390; 2 Dea. & C. 563.

(*n*) *Ex parte Lewis*, 3 M., D. & D. 93; 7 Jur. 244.

CHAP. XIII.

to show fraud
or mischief
sustained.

Proceedings
as to annul-
ment before
Act of 1849.

cient if the mischief was probable; but where a docket was struck upon an honest, though erroneous, belief of the creditor, that an act of bankruptcy had been committed, the commission was supported upon proof of an act of bankruptcy committed subsequently to the docket, but before the commission, in preference to a commission subsequently issued (*o*).

Where a trader having issued a fiat against himself under stat. 7 & 8 Vict. c. 96, s. 41, and delayed issuing it beyond the time prescribed by the statute 5 & 6 Vict. c. 122, s. 4, the fiat was annulled, and a new fiat issued to a creditor (*p*).

Upon an application to annul a fiat for want of prosecution, when sixteen days had elapsed between the date of the fiat and the adjudication, but it appeared the bankrupt had received debts due to him, the court refused to annul (*q*).

These were all cases prior to the Act of 1849, which greatly simplified the proceedings to obtain adjudication. We are aware of but few objections of the same kind since that act, brought forward on petition to annul. If, however, the bankrupt were misnamed in the petition, or misdescribed in such a way as probably to mislead creditors, there is little doubt that such misnomer or misdescription would still be good ground for annulling. (*See ante, Proceedings to obtain Adjudication.*)

The circumstance that the affidavit in support of the petition for adjudication being sworn before a Master in Chancery, who was the solicitor to the petitioning creditor, although highly improper, was held not to be a sufficient ground for annulling the fiat (*r*).

By Act of
1849, security
given or money
paid to peti-
tioning credi-
tor, an act of
bankruptcy.

By stat. 12 & 13 Vict. c. 106, s. 71, if any such trader, after the issuing of any fiat or filing of any petition for adjudication of bankruptcy against him, shall pay money to the petitioning creditor, or give or deliver to such petitioning creditor any satisfaction or security for his debt or for any part thereof, whereby such petitioning creditor may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction or security shall be an act of bankruptcy; and if adjudication of bankruptcy shall have been made under such fiat or petition, the court may either declare such adjudication to be valid, and direct the same to be proceeded in, or may order it to be annulled, and a petition or new petition for adjudication may

Court in such
case may pro-
ceed with ad-
judication, or

(*o*) *Ex parte Webster*, 2 Glyn & J. 252.

D. & D. 449.

(*p*) *Ex parte Turner*, 10 Jur. 812.

(*r*) *Ex parte Caldwell*, 3 De G. & S. 664.

(*q*) *Ex parte Whipple*, 8 Jur. 156; 3 M.,

be filed, and such petition or new petition may be supported either by proof of such last-mentioned or any other act of bankruptcy.

Such a proceeding by section 268 of the same act causes a forfeiture of the whole debt of the petitioning creditor, which supplies a reason for the annulling mentioned in the section just set out, and for the jurisdiction given to the court to declare the first adjudication valid, as the petitioning creditor's being gone, the adjudication would naturally fall with it. The intention of the enactment is held to be for the benefit of the other creditors, and on this ground the court, under the similar clause in the Act 6 Geo. 4, c. 16, refused to annul at the instance of the bankrupt himself(s).

And where the petitioning creditor openly, and in perfect ignorance of its illegality, received part of his debt from the bankrupt, and afterwards refunded it with the approbation of the commissioner, the court on the petition of the assignees declared the fiat to be valid (t). And where the bankrupt was indebted to three persons only, besides the petitioning creditor, two of whom being for debts to a small amount, declined to prove, and the other consented to a supersedeas, but the petitioning creditor refused to receive the amount of his debt, fearing the penalty of the 8th clause of the statute 6 Geo. 4, c. 16, the Lord Chancellor thought it would not apply, and ordered the supersedeas upon payment to the petitioning creditor of his debt and costs (u). There being a fiat against one of three partners, an application of the bankrupt to annul, the partners being willing to pay the debt, was refused, unless on the express consent of the petitioning creditor; his appearing and not opposing was held insufficient (x).

Formerly, if the fiat were concerted between the bankrupt and the petitioning creditor, however beneficial it might appear to be to the creditors (y), or if it was the bankrupt's fiat, that is to say, one sued out at his instigation, however hostilely it might be prosecuted (z), the court, upon petition, would supersede it.

By stat. 12 & 13 Vict. c. 106, s. 115, no fiat in bankruptcy shall be annulled, nor any petition for adjudication of bankruptcy dismissed, nor any adjudication reversed, by reason only that the fiat,

CHAP. XIII.

annul it, and allow new petition.

Court formerly refused to annul on application of bankrupt in such case.

Petitioning creditor receiving debt through ignorance, and refunding it, fiat held valid.

(s) *Ex parte Kirk*, 15 Ves. 464.

(t) *Ex parte Nesbitt*, 4 Dea. 171; Mon. & C. 362.

(u) *Ex parte Smith*, 2 Glyn & J. 291; and see *Re a Petition for Adjudication*, 33 L. T. 384.

(x) *In re Black*, 7 Jur. 474.

(y) *Ex parte Edmonson*, 7 Ves. 303;

Ex parte Brookes, Buck, 257; *Ex parte Gouthwaite*, 1 Rose, 87; *Ex parte Prosser*, Buck, 77.

(z) *Ex parte Downes*, 1 Rose, 398; *Ex parte Staff*, Buck, 249, 431; *Ex parte Grant*, 1 Glyn & J. 17; overruling *Ex parte Warwick*, 4 Mad. 262.

CHAP. XIII.

petition or adjudication, or act of bankruptcy, has been concerted or agreed upon between the bankrupt, his solicitor or agent, or any of them, and any creditor or other person.

Upon a similar section in 5 & 6 Vict. c. 122, it was held, that the section did not enable a creditor to sue out a fiat founded on a deed executed by the bankrupt in trust for his creditors, which deed was so executed with the concurrence of the creditor, but the court annulled the fiat (*a*).

Before Act of 1861, fiat concerted or not issued *bonâ fide* for general creditors, not supported.

It was held under the former law, that this section also did not extend to support a fiat fraudulently concerted for the purpose of giving the bankrupt the protection of a certificate (*b*); or to save the bankrupt from other process, if the fiat is not issued *bonâ fide* for the benefit of the general creditors (*c*); but it may be doubtful whether these cases can now be followed, for the reason which will presently be stated. The intention with which the proceedings to obtain adjudication are taken are to be judged of by evidence, as intention is proved in other matters; and it is not sufficient evidence of a fraudulent collusion to show that there are little or no assets, but this was always held to be a strong fact, which, with other evidence, would go far to show a fraudulent intent (*d*). Thus, where the petitioning creditor was an attorney, and had as such shortly before the petition defended actions for the bankrupt, and had elected himself, or caused himself to be elected, creditors' assignee, and the assets were trifling, these facts were held sufficient to show that the adjudication was fraudulent, and it was accordingly annulled (*e*).

Adjudication for purpose other than proper object of fiat, bad, and annulled.

The particular case just mentioned of a collusive adjudication for the purpose of protecting the bankrupt, being held bad, notwithstanding the enactments forbidding an adjudication to be annulled for concert merely, is only a branch of a more general rule, according to which an adjudication obtained for any purpose foreign to the legitimate object of a fiat, as to effect a dissolution of partnership (*f*), or to defeat an award made against the bankrupt, and not for the benefit of his creditors (*g*), or for the purpose

(*a*) *Ex parte Payne*, De G. 534; 11 Jur. 568.

(*b*) *Ex parte Taylor*, 4 Dea. & C. 125; 2 Mon. & A. 36; *Ex parte Edwards*, 1 M., D. & D. 8; *Ex parte Caldecott*, 4 Dea. 264; Mon. & C. 600; *Ex parte Lewis*, 1 M., D. & D. 365; *Ex parte Clare*, 4 Dea. 156.

(*c*) *Ex parte Woodward*, 2 M., D. & D. 493; *Ex parte Spicer*, Ib. 388; *Ex parte Barnett*, Ib. 325; see also *Ex parte Frith*,

Fonb. 233; *Ex parte Norton*, 8 Jur. 965.

(*d*) *Ex parte Caldecott*, 4 Dea. 264; M. & Ch. 600; *Ex parte Clare*, 4 Dea. 156.

(*e*) *Re Hahn and Freystadt*, 30 L. T. 371.

(*f*) *Ex parte Browne*, 1 Rose, 151; *Ex parte Christie*, Mon. & B. 314; 2 Dea. & C. 465, 488; *Ex parte Parkes*, 3 Dea. 31; *Ex parte Johnson*, 2 M., D. & D. 678; *Ex parte Phipps*, 3 M., D. & D. 505.

(*g*) *Ex parte Smallcombe*, 7 Jur. 708.

of stopping a suit in Chancery (*h*), or to determine a lease (*i*), or to force the bankrupt to compromise (*k*), or to enforce the payment of a disputed debt (*l*), or the like, particularly if there be any fraudulent motive mixed up in it (*m*), was in general held bad, and would be annulled whether the purpose it was intended to effect could be otherwise defeated or not (*n*).

So, as has been seen above, a collusive adjudication for the purpose of protecting the bankrupt from legal process was bad, though if there were assets an adjudication obtained by a creditor for the simple purpose of defeating an execution against the bankrupt, but without collusion, was perfectly valid (*o*); for, though the purpose of avoiding execution may be a wrongful purpose, so far as the bankrupt himself is concerned, it is not so as respects a creditor, for one of the principal objects of a fiat in bankruptcy is to prevent the property from being swallowed up by any one of the trader's creditors, and to have it fairly distributed amongst all (*p*); and the court has refused to annul a fiat taken out with intent of operating as a fiat, though the intention was also, and even mainly, to defeat an action (*q*); but where there were no assets, and a judgment could therefore only have effect against the person of the debtor, there a fiat taken out by another creditor to defeat the judgment creditor, even without further direct proof of collusion, was annulled (*r*) with costs.

Adjudication by creditor to defeat execution against bankrupt, if without collusion, and where there were assets, good.

So fiat got to defeat an action.

If no assets, fiat annulled, although no collusion.

At the time of the decisions mentioned above, the right of a debtor to obtain adjudication against himself was very closely limited; under the Act of 1849 he was bound to show available assets to the amount of at least 5s. in the pound on his debts, under that of 17 & 18 Vict. c. 119, to the amount of an absolute sum of 150*l.*; in default of this the petition was dismissed. The policy of the former law, therefore, was to refuse access to the Court of Bankruptcy for the advantage of the debtor himself, who was left to the process of the common law, alleviated by the statutes for the relief of insolvent debtors. Since the statute of 1861 the Court for the Relief of Insolvent Debtors is abolished, and the statutes on the matter for the most part repealed: the only court now left

(*h*) *Ex parte Kemp*, 1 M., D. & D. 657.

(*i*) *Ex parte Gallimore*, 2 Rose, 234.

(*k*) *Ex parte Harcourt*, 2 Rose, 203.

(*l*) *Ex parte Hall*, 3 Dea. 405.

(*m*) *Ex parte Wilbeam*, Buck, 459; 5 Mad. 1; *Ex parte Mucklow*, 3 Dea. & C. 25.

(*n*) *Ex parte Bourne*, 2 Glyn & J. 137.

(*o*) *Menham v. Edmonson*, 1 B. & P.

369; *Ex parte Edmonson*, 7 Ves. 303; *Ex*

parte Gardner, 1 Rose, 377; 1 V. & B.

45; *Ex parte Arrowsmith*, 14 Ves. 209.

(*p*) See *Ex parte Gane*, 2 Glyn & J.

319.

(*q*) *Ex parte Bourne*, 2 Glyn & J. 137;

Ex parte Norton, De G. 504; 11 Jur. 699.

(*r*) *Ex parte Gaitskell*, 3 Dea. 635; M.

& Ch. 160.

CHAP. XIII.

Debtor may now petition against himself;

and will be adjudicated bankrupt by registrar without petition.

Concert with creditors for that purpose now not regarded.

But adjudication for purpose not proper object of bankrupt law, still open to annulment.

Coming to England for benefit of Act of 1861, and to defeat creditors elsewhere.

for dealing with insolvency in any shape is the Court of Bankruptcy and the county courts acting in bankruptcy: no restriction is now put on a debtor petitioning for adjudication against himself; on the contrary, provision is made for his doing so even *in formâ pauperis*, and adjudications in which no assets, or assets to a very trivial amount are forthcoming, are now rather the rule than the exception. Again, if a debtor is taken in execution and imprisoned for debt, it is now the duty of the registrar of the Court of Bankruptcy to adjudicate him a bankrupt, if after a short time he have himself taken no steps for the purpose. Under all these considerations it would seem that the principle of the cases under comment can no longer, since the abolition of the statutes for the relief of insolvent debtors, be considered to govern the law, so far as that principle would prevent a debtor, either in his own person, or through the agency and assistance of a friendly creditor, seeking the aid of proceedings in bankruptcy, for the simple purpose of evading his liabilities under adverse judgments at law, or decrees in equity; and, in fact, in several cases proceedings in bankruptcy, manifestly taken with this single object, have been carried out, and the bankrupt has under such an adjudication obtained an unconditional order of discharge, as the fact that the adjudication was obtained for the purpose of discharging the debtor is not one of the grounds under the 159th section of the Act of 1861, on which the court is empowered to refuse or suspend or annex conditions to the order of discharge (s).

Subject to these remarks, however, the general principle still holds good that an adjudication obtained for any purpose not legitimately the object of the bankrupt law in its new form, might still be annulled, the change seeming to be not in the principle enunciated, but in the fact that that is now legitimately an object of the bankrupt law which was formerly not so. So where a person properly domiciled in Ireland, where the vast majority of his creditors resided, came to England for the purpose of taking the benefit of the Bankruptcy Act, 1861, and to defeat his creditors in Ireland, and was adjudicated on his own petition, the adjudication was annulled on the petition of a creditor, the bankrupt having resided for sixteen weeks at hotels within the London district (t).

(s) See *Re Boswell, Ex parte Glass*, 31 L. J., Bcy. 73; *Ex parte Crabtree*, 12 W. R. 768; *Re Drinkwater, Ex parte Hewitt*, 31 L. J., Bcy. 83, in this case future property was declared subject to the debts proved under the bankruptcy, but as to this point see *Re Mew and Thorne*, 31 L. J., Bcy. 87.

Re Graves, 11 W. R. 958, must be taken to be overruled; see upon the old law on this matter, *Ex parte Sellers*, 2 De G. & J. 218.

(t) *Ex parte Harris, Re Bianconi*, 9 L. T., N. S. 847.

Fraud to obtain adjudication will vitiate it.

Any fraud used for the purpose of obtaining an adjudication will of course vitiate it; and even where an adjudication had been in itself honestly obtained, but the obtaining it was a breach of faith towards the other creditors, it was annulled (*u*). So wherever a fraud has been practised upon the court in the issuing of a fiat, or the filing of a petition, the court upon petition will annul the adjudication, however beneficial it may appear to be to the creditors, and will make the parties implicated in the fraud pay the costs (*x*). And where it appeared that, with a view to impose upon the Great Seal, a fiat had been taken out upon fabrications of negotiable paper, the court directed the Attorney-General to take such steps for the prosecution of the parties as the case might require (*y*).

Under the former law, if the bankrupt had paid all his creditors their full demands, with interest, the court, upon his petition, would annul the fiat (*z*); and where all the creditors had been paid, save one, who could not be found, the court granted the supersedeas, upon paying the debt of the absent creditor into court (*a*).

There seems no reason to suppose that the court would not still annul under the new law, in the like circumstances, and even where the bankrupt has not paid his creditors their full demands, yet, if all the creditors who have proved upon the estate consent to the fiat or adjudication being annulled, the court upon petition will annul it (*b*). In a case where all the creditors consented to the supersedeas, except one, who had died insolvent, and whose son was ready to consent, and all the commissioners save one were dead, it was ordered on petition that the surviving commissioner should certify to the Chancellor the names of the creditors who had proved, and that the son of the deceased creditor might be allowed to consent to the supersedeas (*c*); but in a similar case the court held the consent of the son insufficient, and that a limited administration was necessary (*d*), but the signature of one assignee of a bankrupt creditor, with an affidavit of the assent of the other assignee, who was abroad; and also the signature of the executrix

Fiat annulled on petition of bankrupt, he paying all creditors in full, or if all assent, though not paid in full.

What a sufficient assent of creditors.

(*u*) *Ex parte Lowe*, 1 Glyn & J. 78; *Ex parte Johnstone*, 4 De G. & S. 204; 15 Jur. 739.

(*x*) *Ex parte Brookes*, Buck, 257; *Ex parte Boyle*, Ib. 247; *Ex parte Battier*, Ib. 426; *Ex parte Thorpe*, 1 Ves. 394.

(*y*) *Ex parte Emery*, Buck, 422; and see *Ex parte Kirshaw*, 6 Ves. 2.

(*z*) See *Ex parte Bryant*, 2 Rose, 1;

1 V. & B. 211; *Ex parte Lupton*, 2 Dea. & C. 136.

(*a*) *Ex parte Crowther*, 4 Dea. & C. 31.

(*b*) *Ex parte Duckworth*, 16 Ves. 416.

(*c*) *Ex parte Wallis*, 2 Glyn & J. 25; and see *Ex parte Leader*, 3 Dea. & C. 468.

(*d*) *Re Hall*, 1 Mon. & A. 54; 3 Dea. & C. 449.

CHAP. XIII.

of the continuing partner of a dissolved partnership, were held sufficient (*e*), and a consent for an absent creditor under a power of attorney (*f*), or the consent of several creditors under one power of attorney (*g*), for that purpose, is sufficient; but a consent under a general power of attorney was held insufficient, where the consent of the creditor himself could not be obtained (*h*). The official assignee need not consent (*i*); and, if a proper consent cannot be obtained, the objection may be obviated by payment of the amount of the absent creditor's debt into court (*k*); and where a petition presented for a new choice of assignees stands over with a view to annulling, a creditor having signed his consent cannot allege that it was with a view of obtaining some advantage which does not extend to the other creditors (*l*); but where the last examination has been adjourned sine die, the court will not annul, with the consent of creditors, upon the petition of the bankrupt, without knowing the grounds of the adjournment (*m*). In general it seems the proper form of an application to annul by consent is by petition (*n*), and it ought not to be presented, and in general will not be allowed until after the choice of assignees (*o*), or, at least, until after the advertisement of the bankruptcy (*p*); for till advertisement the court has no means of knowing who are creditors. In Ireland, indeed, under a general order to that effect, an adjudication is not annulled by consent until after the time for passing the last examination, as up to that time there is a strong probability that creditors may still be discovered who were unknown before, and until then the creditors may probably be consenting in ignorance of the condition of the assets (*q*). Upon annulling by consent, a purchaser under the fiat is entitled to be indemnified against judgments outstanding against the bankrupt before the bankruptcy (*r*). In general the court will not, without proof of a want of legal requisites, annul an adjudication upon the petition of a creditor where purchases have been made under it (*s*); nor upon the petition of the bankrupt in such case, unless there be affidavits that the bankrupt has joined in or con-

Consent under general power of attorney not sufficient.

Absent creditor's debt may be paid into court.

Petition proper form of application to annul, but not entertained till advertisement of bankruptcy.

Purchaser under fiat indemnified against bankrupt's judgments.

No annulment, on petition of creditor, of purchases made, nor on petition

- (*e*) *Ex parte Leader*, 3 Dea. & C. 468.
 (*f*) *Ex parte Hamilton*, 2 D. & C. 139.
 (*g*) *Anon.*, 3 Dea. 377.
 (*h*) *Re Sampson*, 3 Dea. & C. 198.
 (*i*) *Ex parte Parker*, 3 Dea. & C. 112.
 (*k*) *Ex parte Hamilton*, 2 Dea. & C. 519; *Re Brecknell*, 1 M. & A. 80; *Ex parte Monk*, 4 Dea. 262; Mon. & C. 637; *Ex parte Tredinnick*, 31 L. T. 270.
 (*l*) *Ex parte Ridley*, Mon. 131.
 (*m*) *Ex parte Gudge*, 4 Dea. & C. 358;

- 1 Mon. & A. 341.
 (*n*) *Re Spicer*, 9 Ir. Ch. 5.
 (*o*) *Ex parte Hill*, 7 L. T., N. S. 758.
 (*p*) *Ex parte Ludbrook*, 9 Jur., N. S. 950; 11 W. R. 1006; 8 L. T., N. S. 781; 2 N. R. 561; see also *Re Spicer*, supra; *Ex parte Potts*, De G. 326.
 (*q*) *Re Spicer*, 9 Ir. Ch. 5.
 (*r*) *Ex parte Lautour*, Mon. & B. 89.
 (*s*) *Ex parte Edwards*, 10 Ves. 104.

firmed all the conveyances made by the assignees (*t*). So, even where the bankrupt had paid his creditors twenty shillings in the pound, and obtained his certificate, the court refused a supersedeas, without the consent of the creditors (*u*); and where the commission had been issued twenty-four years, and all the creditors had been paid in full, but the bankrupt had not obtained his certificate, the court refused to annul on the ex parte application of the bankrupt. In such a case the court would annul on the consent of the creditors, to procure which a renewed fiat might issue, or the heirs of the assignees might be traced, or the debts expunged on the ground of having been paid (*x*). So, it is usually refused to the bankrupt, after long acquiescence by him without a trial at law (*y*).

CHAP. XIII.

of bankrupt, unless he confirms purchases.

Cases in which annulment refused.

It was at first doubted whether, under the 12 & 13 Vict. c. 106, the court had jurisdiction to annul on consent of creditors except under ss. 230, 231; and if every creditor consented, such an order was even then made at the risk of the petitioner (*z*), but the court has refused to annul the adjudication in a case where the bankrupt might have to be prosecuted under the bankrupt law, although the application was with the consent of all the creditors and of the assignees (*a*). Such doubts would seem now scarcely to have room for existence, as the jurisdiction has often been exercised, and never declared to be illegal.

An adjudication against a bankrupt on his own petition may be annulled with consent of the bankrupt and assignees, to enable a creditor to sue out a fiat under which transactions between the bankrupt and others might be impeached (*b*), or for the purpose of setting aside trust deeds (*c*), but such an application must be supported by an affidavit showing that the debt of the proposed petitioning creditor is old enough to overreach the deeds (*d*): and even without consent of any party, on the petition of a creditor seeking to annul an adjudication made on the bankrupt's petition, and to obtain an adjudication on his own, relating to an act of bankruptcy earlier than the debtor's petition, the court will grant his application if he can show that proceedings may be impeached under the new adjudication which could not be impeached under the adjudication made on the debtor's petition, and that the new adjudication

Annulment, with consent of bankrupt and assignees, of adjudication made on bankrupt's own petition. Affidavit in support in such case.

Annulment without any consents on petition of creditor seeking new adjudication.

What creditor should show.

(*t*) *Ex parte Milner*, 19 Ves. 204; and see *Ex parte Clarke*, 3 M., D. & D. 595.

(*u*) *Ex parte Jackson*, 8 Ves. 533.

(*x*) *Ex parte Ward*, 3 Dea. 39; 3 Mon. & A. 399.

(*y*) *Ex parte Kirk*, 15 Ves. 464.

(*z*) *Ex parte Luxford*, Fonb. 261; *Re*

Harwood, 1 H. & T. 572.

(*a*) *Ex parte Harris*, Fonb. 262.

(*b*) *Ex parte Louch*, 1 De G. 463.

(*c*) *Ex parte Thomas*, 12 Jur. 551; De G. 612; 17 L. J., Bcy. 21.

(*d*) *Ib.*

CHAP. XIII.

will be more for the benefit of creditors than the old. But the petition should in this case state distinctly the act of bankruptcy which it seeks to make the foundation of the new adjudication, and the specific matters which it seeks to impeach (*e*).

Former provisions for composition after bankruptcy, repealed by Act of 1861.

Now bankrupt should proceed under ss. 185 et seq. of Act of 1861.

Course begun under sect. 110 may be completed under sect. 187.

No agreement good, by assignees to suspend proceedings, except under terms of statute.

The provisions in the Act of 1849 for composition after bankruptcy are repealed by the Act of 1861. The best course for a bankrupt, wishing to annul his adjudication by a composition with his creditors, is to follow the course laid down in that statute, ss. 185 et seq. (*f*), of which hereafter. The course laid down (s. 110) will enable him practically to avoid the general consequences of bankruptcy; but in that section the power of the court seems to extend only to suspending the proceedings in the bankruptcy, not to annulling the bankruptcy itself; but there seems nothing to prevent the course begun under the 110th section from being completed under the 187th, thus leading to the annulment of the bankruptcy. Except under the statutory provisions, and without complying with the terms of the statute, the assignees cannot enter into an agreement to suspend proceedings under the bankruptcy, on an offer from the bankrupt and his friends; and where an agreement was so entered into, to pay the creditors in full, and that the fiat should be annulled, the court refused to sanction the agreement by restraining the assignees from selling the property, although a dividend of ten shillings in the pound had been paid, and the assignees held a fund sufficient to pay the residue of the debts (*g*).

Fiat formerly annulled, if issued to wrong place.

Impounding.]—It was formerly a ground for an application to annul that the fiat had been issued to an improper place, or that the venue had been changed to suit some general purpose of the bankrupt, in which cases the fiat was annulled or the proceedings were impounded, for the purpose of giving operation to a new fiat, but these applications were to a great extent rendered useless by the Act of 1849.

That practice repealed by sect. 90 of Act of 1849.

Now, sect. 88 of Act of 1861, London court may impound petition or

By section 90 of that statute, since repealed, the senior commissioner had a power like that now vested by sect. 88 of the Act of 1861 in the London court, which enables it to consolidate the proceedings, or any part thereof, under two or more petitions for adjudication, or to impound any petition for adjudication, or any judgment debtor summons, and the proceedings thereunder or any part

(*e*) *Ex parte Potter, Re Barron*, 13 W. R. 189. 781; 2 N. R. 561.

(*f*) *Ex parte Ludbroke*, 11 W. R. 1006; 9 Jur., N. S. 950; 8 L. T., N. S. (g) *Ex parte Nainby*, 3 Dea. 587; *Re Spicer*, 9 Ir. Ch. 5.

thereof, upon such terms as the court shall think fit; or to transfer any petition for adjudication or judgment debtor summons, and the proceedings thereunder, and the prosecution or further prosecution thereof from the court in any one district to the court in any other district, or to a county court having jurisdiction in bankruptcy.

CHAP. XIII.

judgment
debtor sum-
mons;
and may con-
solidate two or
more petitions.

Who may apply to Annul.]—In general any person interested in annulling the bankruptcy may apply to the court to annul unless he has done some act to preclude him from his application, or is under some personal incapacity. The commonest case is that of an application by the bankrupt himself, who is of course interested in reinstating himself and his credit, and recovering the management of his property; and he may so petition *in formâ pauperis* (*h*), and even though under commitment by the commissioner for not answering (*i*). It seems, however, that he must first surrender under the bankruptcy before he can petition to annul even for want of legal requisites (*k*). This seems a most arbitrary rule, and the cases just mentioned take away the only reasonable ground on which it could be supposed to rest, viz., that a court will never listen to one in contempt unless for the purpose of purging his contempt. It seems from the cases referred to, that a petition to annul must either be held to be a proceeding tending to purge the contempt, or else that the rule does not hold in such a case; for a bankrupt in prison for not answering is as fully in contempt as one not having surrendered; in either case, if there is no jurisdiction, there can be no contempt, and the object of the petition to annul for want of legal requisites is to dispute the jurisdiction of the court. There seems no objection to the rule so far as annulling on other grounds is concerned, and it has been often rigidly carried out even where the parties interested were all consenting (*l*); but even in cases where it was sought to annul, not for want of legal requisites, the consent of creditors has of late been sometimes held to supersede the necessity of a surrender (*m*), and the entire rule requiring a surrender before the presentation of a petition by the bankrupt to annul has of late years been confined

Any one in-
terested in an-
nulling a bank-
ruptcy may
apply to court.

Bankrupt may
now petition
for annulment
in formâ pau-
peris.

Must surrender
before peti-
tioning for
annulment for
want of legal
requisites.

Propriety of
rule open to
doubt.

Rule requiring
surrender con-
fined to cases

(*h*) *Ex parte Northam*, 2 Rose, 140; 2 V. & B. 124.

(*i*) *Ex parte Brown*, 2 Sw. 290; *Ex parte Magennis*, 1 Rose, 60; 18 Ves. 289; *Ex parte Chambers*, 1 Dea. 197.

(*k*) *Ex parte Drake*, 2 D. & Ch. 91; Mon. 486; *Ex parte Jones*, 11 Ves. 409; *Ex parte Stokes*, 7 Ves. 405; *Ex parte Kirkman*, 1 M. & Ay. 709; *Ex parte Hodson*,

De G. 374.

(*l*) *Re Fellingier*, 28 L. T. 164; *Ex parte Jones*, 8 Ves. 328; *Ex parte Wilkinson*, 1 Glyn & J. 387; *Ex parte Jones*, 11 Ves. 409; *Ex parte Galpin*, Mon. 207.

(*m*) *Ex parte Glynn*, Mon. 124; *Ex parte Chitty*, 5 Jur. 556; 1 M., D. & D. 682.

CHAP. XIII.

where time limited for surrendering has expired.

Petition presented before, allowed without surrender.

Court will grant renewed fiat to take bankrupt's surrender with a view to petition to annul.

Bankrupt petitioning to annul must abandon action and try validity of adjudication.

If purchases made under the bankruptcy, bankrupt must confirm or give indemnity, if he cannot confirm.

Court not bound by finding of jury on issue directed.

to cases where the time for surrender has expired. If the petition be presented within the time limited, it is allowed (*n*); and if the bankrupt has surrendered, he may petition to annul with the consent of creditors, though he did not attend on the day to which his examination was adjourned (*o*); and, if necessary, the court will grant a renewed fiat to take the bankrupt's surrender, with a view to his petitioning to annul, all the creditors being satisfied (*p*). Where the bankrupt presented his petition to supersede, and died before the day limited for his surrender, and without having surrendered, and the petition was revived by his personal representative, the court granted the supersedeas (*q*). He must, however, elect his remedy, for it has been held that he cannot at the same time prosecute an action to try the validity of the adjudication, and proceed by petition to annul it. He must first abandon his action (*r*). This also seems a somewhat inconvenient rule of practice, as upon a petition to annul the court often feels it right to direct an action or an issue to try the legal validity of the adjudication. A more convenient rule would seem to be to retain the petition till after trial of the action, putting the petitioner upon terms to speed the action, and on its result to adjudicate upon the petition to annul (*s*). If no action is pending, the court has no jurisdiction to compel a bankrupt, as a condition of hearing his petition to annul, to undertake not to bring an action (*t*). If there have been purchases under the bankruptcy, the application must be accompanied with affidavits that the bankrupt has joined in or confirmed the conveyances of the assignees (*u*), or has given an indemnity, in cases where the bankrupt cannot confirm the purchases (*x*): at least the court will make that one of the conditions on which it annuls the adjudication. The court, on an issue to try the validity of an adjudication, as in other cases of issues, does not always hold itself bound by the finding of the jury (*y*), nor will it do so of necessity even where the verdict may have been upon an action (*z*).

Where the bankrupt alleged that the fiat had been concocted

(*n*) *Ex parte Austen*, 1 M., D. & D. 247; *Ex parte Stubbs*, M. & Ch. 523; *Ex parte Garnett*, De G. 95.

(*o*) *Ex parte Norcott*, Mon. 281; *Ex parte Thomas*, 3 Dea. & C. 234; *Ex parte Garnett*, De G. 95.

(*p*) *Ex parte Galpin*, Mon. 207.

(*q*) *Ex parte Whittington*, Buck, 235.

(*r*) *Ex parte Burgess*, Jac. 559; *Ex parte Drake*, 2 D. & Ch. 91.

(*s*) See *Ex parte Price*, Buck, 230; 3 Mod. 228.

(*t*) *Ex parte Daly*, 1 Mon. & A. 343; 3 Dea. & C. 728.

(*u*) *Ex parte Milner*, 19 Ves. 204.

(*x*) *Ex parte Lautour*, Mon. & B. 89.

(*y*) See *Ex parte Prosser*, Buck, 77; *Ex parte Bryant*, 2 Rose, 1; *Ex parte Dick*, 1 Rose, 51.

(*z*) *Ex parte Eager*, Mon. 85.

CHAP. XIII.

between himself and the creditors, who proved by the issue of fictitious promissory notes, but his evidence was unsupported, the court refused to annul on his petition (*a*). If the bankrupt have done any acts which may be construed into an implied contract or undertaking not to dispute his adjudication, this would in all probability be held a ground for refusing an application on his part to annul; but the consent of the bankrupt to the advertisement of the adjudication is not such an act (*b*).

Application by bankrupt to annul refused, if acts done by him amounting to contract not to dispute fiat.

By the 233rd section of the Act of 1849, if the bankrupt shall not (if he were within the United Kingdom at the date of the adjudication) within twenty-one days (now two calendar months, *infra*) after the advertisement of the bankruptcy in the London Gazette, or (if he were in any other part of Europe at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action, suit or other proceeding to dispute or annul the fiat, or the petition for adjudication, or shall not have prosecuted the same with due diligence and with effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged bankrupt, that such person so adjudged bankrupt became a bankrupt before the date and suing forth of such fiat, or before the date and filing of the petition for adjudication, and that such fiat was sued forth, or such petition filed, on the day on which the same is stated in the Gazette to bear date.

By sect. 233 of Act of 1849, advertisement in London Gazette evidence of bankruptcy, unless bankrupt, by action, &c., disputes fiat within limited time.

By stat. 17 & 18 Vict. c. 119, s. 24, the above section of the 12 & 13 Vict. c. 106 shall, in the case of every person adjudged bankrupt on or after the 1st of September, 1854, be construed and acted upon for all purposes whatsoever, as if the words "two calendar months" were therein inserted in lieu of the words "twenty-one days."

By Act 17 & 18 Vict. c. 119, s. 24, two calendar months substituted for 21 days in Act of 1849.

There was a similar restriction contained in 5 & 6 Vict. c. 122, s. 24, but it was held, that the section operated only to prevent the bankrupt after the time limited, from calling in question the petitioning creditor's debt, trading or act of bankruptcy; but that it did not prevent the bankrupt after that period disputing the equitable validity of the fiat upon other grounds, as fraud, or

(*a*) *Ex parte Nainby*, 3 Dea. 121; 3 M. & Ay. 452.

(*b*) *Ex parte Gould*, De G. 29.

CHAP. XIII. that the fiat was not issued for the legitimate purpose of a fiat (c).

Isle of Man
not within
United King-
dom.

The Isle of Man is not within the United Kingdom; therefore, where the bankrupt was in the Isle of Man, he was held entitled to three months, within which he might petition to annul (d).

Case of infant
no exception.

The case of an infant is no exception, therefore a petition to annul on the ground of the infancy of the bankrupt, presented after the twenty-one days, was dismissed as out of time (e).

Applications
to annul made
after time for
showing cause
under sect. 104
of Act of 1849,
allowed within
two months
under sect. 24
of Act of 1854.

Although appeals in general must be brought within twenty-one days from the order appealed against under sect. 12 of the Act of 1849, it has been held that the enactments above mentioned, viz., the 233rd section of the Act of 1849 and the 24th section of the Act of 1854, 17 & 18 Vict. c. 119, together create an exception to this general rule, and that an application to annul, made by a bankrupt after the time has elapsed for showing cause against his adjudication under the 104th section of the Act of 1849, is an appeal from the order of adjudication, and should be made in the Court of Appeal; but it may be so made at any time within the two months given by the 24th section of the Act of 1854 (f). It follows from this that such an application must now be by motion, though formerly the regular form of application to annul was by petition.

Must be by
motion.

Commissioner
has no juris-
diction to
annul on appli-
cation of bank-
rupt, except
under sect. 104
of Act of 1849.
After adver-
tisement,
bankrupt must
appeal against
fiat under sect.
233 of Act of
1849.

The commissioner has no jurisdiction to annul his adjudication of bankruptcy on the application of the bankrupt, except upon the bankrupt showing cause under the 104th section of the Act of 1849. After the advertisement of adjudication the bankrupt must appeal against the adjudication to the superior court under the 233rd section, and within the time there limited; and where the bankrupt petitioned the commissioner against the adjudication within twenty-one days after the advertisement, and appealed to the superior court from the decision of the commissioner after more than twenty-one days from the advertisement, it was held, that the petition to the commissioner was an appeal which should have been made to the superior court, and that the appeal to the superior court being more than twenty-one days after the advertisement, was too late (g).

Bankrupt's
application to

It would seem, too, that on the bankrupt's application to the

(c) *Ex parte Phipps*, 3 M., D. & D. 488, 505; 8 Jur. 12.

(d) *Davison v. Farmer*, 6 Exch. 242.

(e) *In re West*, 3 De G., M. & G. 198; 1 De G., M. & G., B. C. 175; 22 L. J., Bcy. 71.

(f) *Ex parte Miller*, 32 L. J., Bcy. 45;

7 L. T., N. S. 657; 1 N. R. 184; see *Ex parte Thorold*, 2 M., D. & D. 286; 1 Ph. 239; 7 Jur. 1003.

(g) *Ex parte Carter*, 15 Jur. 1142; 1 De G., M. & G. 212; 21 L. J., Ch. 23; S. C., on appeal, 17 Jur. 515; *Carter v. Dimmock*, 4 H. of L. 337.

commissioner the adjudication can only be avoided for want of legal requisites; if he wishes to annul on other grounds he must proceed by appeal, for the form of notice to dispute the adjudication under the 104th section of the Act of 1849 is given by the 14th rule of General Orders of October, 1852, and requires the notice to state which of the following matters, viz., the trading, the petitioning creditor's debt or the act of bankruptcy is disputed, so that the notice which disputes none of these is informal, and the application will on such a notice be refused (*h*).

CHAP. XIII.

commissioner to annul must be for want of legal requisites.

When a petition of one of the bankrupts to annul a joint fiat was presented within the time prescribed by the statute for taking proceedings to dispute the fiat, and on an objection by the court that the petition ought to be served on the other bankrupt, the petition was re-answered that it might be so served; but, before it was so re-answered and served, the time to dispute the fiat had run out: it was held, that the court had jurisdiction to entertain the petition (*i*). As to showing cause against adjudication under the 164th section, *see ante*.

Application of one of two bankrupts under joint fiat held to be in time, although time expired before petition re-answered under order of court, and served on other bankrupt.

When the petition of the bankrupt to annul was presented within the time, but it was wrongly intitled, and had not been served on the proper party, the court, after the expiration of the time, permitted the title to be amended, and the petition to be served without its being rendered objectionable for not being presented within the time limited by the statute (*j*).

Petition presented in time allowed to be amended and served after expiration of time.

When an order of reversal on appeal rested in minutes, and the counsel for the respondents stated that material considerations had not been brought before the court, the court granted a motion for rehearing, although the twenty-one days had elapsed, but without deciding it to be a matter of right; but, as the order was not complete, it might be considered as a discussion on the minutes (*k*).

Order of reversal on appeal, motion for rehearing granted after twenty-one days.

It has been held, that if proceedings have been taken in due time by the bankrupt abroad to dispute, he is not bound by the Gazette under these clauses (*l*).

Though these enactments and authorities apply only to proceedings by the bankrupt to annul, yet if the application, though made in the name of a creditor, be really that of the bankrupt, the court has acted on the analogy afforded by them, and refused to annul unless within the time limited for the bankrupt to apply (*m*).

Applications by creditors on behalf of bankrupt governed by same rules.

(*h*) Anon., 3 L. T., N. S. 683.

(*k*) *Ex parte Turner*, 2 De G., M. & G. 927.

(*i*) *Ex parte Veysey*, 3 M., D. & D. 420.

(*l*) *Ex parte Bunny*, 1 De G. & J. 309.

(*j*) *Ex parte Lord*, 13 Jur. 1067; 3 De G. & S. 607.

(*m*) *Ex parte Emery*, 4 De G., M. & G. 901; 23 L. J., Bcy. 33.

CHAP. XIII.

Fraud held to be ground for extending time, *sed quære*.

Person attainted of felony cannot be heard by Lord Chancellor, to supersede fiat.

Applications to annul, not by bankrupt or on his behalf, not limited by statute to any time.

Any creditor may petition to annul, and without proving.

Petition in such case to state debt due when petition for adjudication filed, and still subsisting.

Debt must continue due at hearing.

Although the Gazette is evidence of the bankruptcy as to the legal requisites, yet when the bankrupt admits the requisites, it has been held, that he may still impeach the validity of the fiat on the ground of fraud, by a petition presented after the time limited by this section (*j*); but this decision, it is submitted, can hardly be reconciled with the decisions above stated of *Carter v. Dimmock* (*k*) on the one hand, and *Ex parte Miller* (*l*) on the other.

It has been decided, that a person attainted of felony cannot be heard by petition to the Lord Chancellor, to supersede a fiat of bankruptcy issued against him, whether his attainder arose out of the fiat or not (*m*).

The application to annul, if made by any one, other than the bankrupt, ought to be made to the commissioner as the court of first instance, and should be brought on by means of a petition; and, unless made by some one on his behalf, there seems no statutory limitation as to the time within which it may be brought (*n*).

Any creditor may petition to annul (*o*), even though he has not proved, for his claim to annul is adverse to the fiat; but his having proved will not preclude his petitioning to annul (*p*); and even a creditor who has been bankrupt can petition to annul if his assignees neglect to prove the debt (*q*). The petition to annul ought to allege him to be a creditor, not only at the time of filing the petition for adjudication, but also at the time of presenting his petition to annul; it has been held insufficient that that fact is stated in the affidavits (*r*). And the petitioner must show himself to be a creditor, by swearing to his debt, either under the petition for adjudication or in support of the petition to annul (*s*); and he must be a creditor at the time his petition is actually heard (*t*); for if a creditor, suing at law, petitions to annul, and he recovers at law, and fixes the bail, who pays the debt before the petition comes on for hearing, the petition cannot be heard (*u*).

If the validity of the petitioner's debt is impeached, as for usury,

(*j*) *Ex parte Phipps*, 8 Jur. 48.

(*k*) 4 H. of L. 337.

(*l*) 32 L. L., Bcy. 45; 1 N. R. 184; 7 L. T., N. S. 657.

(*m*) *R. v. Bullock*, 1 Taunt. 82.

(*n*) See *Ex parte Brierly*, 3 De G. & S. 646; *Ex parte Spicer*, 9 Ir. Ch. 5; *Ex parte Bean*, 1 De G., M. & G. 486.

(*o*) *Ex parte Bean*, *supra*.

(*p*) *Stewart v. Richman*, 1 Esp. 103; *Ex parte Bonsor*, 2 Rose, 61; *Malkin v.*

Adams, Ib. 33.

(*q*) *Ex parte Taylor*, 2 Mon. & A. 36; 4 D. & Ch. 125.

(*r*) *Ex parte Oxley*, 1 Glyn & J. 12; *Ex parte Flight*, 1 Dea. & C. 78; Mon. 515; but see *Ex parte Wyatt*, 1 Mon. & A. 406; *Ex parte Robinson*, Id. 705.

(*s*) Anon., 2 Mad. errata, and 281.

(*t*) *Ex parte Sandall*, 3 Dea. 275.

(*u*) *Ex parte Parry*, Arch. 11th ed. p. 459 (*g*).

the court will direct a previous inquiry to ascertain if the petitioner is a creditor of the bankrupt (*v*). CHAP. XIII.

A creditor may in certain cases apply to annul an adjudication, on the grounds of public policy, for the general benefit of creditors, even though privy to the very act on which he founds his objection to the adjudication. But the court refused an application to annul an adjudication on the ground of fraud, where the petitioner seemed really to have no interest in the annulling, and it appeared that the petition was in reality that of the bankrupt himself, to escape the consequences of his own fraud (*x*). Creditor may, for general benefit of creditors, apply to annul.

Assignees are sufficiently interested to apply to annul, since so long as the bankruptcy stands they are under a duty to act as assignees, and they may be acting without title (*y*). Their application may be grounded on defects appearing upon the face of the proceedings; but such an application will be watched with great jealousy, and the assignees must first do all in their power to clear away the doubts as to the validity of the adjudication, before they apply (*z*). Where the assignees, being satisfied that the evidence on the proceedings, of the act of bankruptcy, &c., would not support the commission, if contested, applied to the petitioning creditor, and pressed him to produce such other evidence before the commissioners as would support it, saying, that, in the event of his not doing so, they should be obliged to petition to supersede the commission, and at his costs; but the petitioning creditor took no notice of these applications of the assignees: the Lord Chancellor held, that it was competent to the assignees to petition for a supersedeas in such a case; but he referred it in the first place to the commissioners to call a meeting for the purpose of receiving information from the petitioning creditor, upon the sufficiency or insufficiency of which would depend the awarding of the supersedeas (*a*). But an assignee, who has a sufficient petitioning creditor's debt, ought not to petition to annul without praying for leave to file a new petition for adjudication (*b*); and where the petition to annul was by one of two assignees, and the other assignee was willing to prosecute the fiat, and the petitioning creditor offered to indemnify the petitioning assignee, the court refused to annul (*c*). Or any party not a creditor, who can show he sus- Assignees may apply to annul.
May apply on account of defects on face of proceedings.
Assignee petitioning to annul, and having sufficient debt, should pray new fiat.
Person not a creditor, sus-

(*v*) *Ex parte Hudson*, 2 Russ. 456.

(*x*) *Ex parte Sayer*, 2 Dea. 491.

(*y*) *Ex parte Hawkins*, 2 M., D. & D. 320.

(*z*) *Ex parte Graves*, 1 Glyn & J. 86; *Ex parte Burnell*, 1 Mon. & A. 44.

(*a*) *Ex parte Graves*, supra.

(*b*) *Ex parte Biggs*, 2 Dea. 549; 3 Mon. & A. 393.

(*c*) *Ex parte Booker*, 3 Dea. 232, 346; 3 Mon. & A. 643.

CHAP. XIII.

taining grievance from fiat, may petition to annul.

Partner of bankrupt may petition, or mere stranger summoned to give evidence before commissioner.

Restrictions as to time for bankrupt to annul, not applicable to other persons acting *bonâ fide*.

Fiat not annulled after certificate, except for fraud or other strong ground.

But delay may be accounted for.

tains a grievance from the bankruptcy, as a trustee under a deed which the adjudication will overreach, can petition to annul (*b*).

So it has been decided, that the plaintiff in an action, in which an attorney, the bankrupt, had been attached for not putting in bail in pursuance of his undertaking, had a sufficient interest to enable him to petition to annul the fiat (*c*). So, it seems, has a partner of the bankrupt (*d*); and even a stranger summoned to give evidence before the commissioner, can petition to annul the adjudication (*e*).

We have already referred to the limitations of time within which the bankrupt must apply to annul, and we have seen that the statutory restrictions upon him do not apply to others proceeding *bonâ fide* to annul for their own behoof. Some restrictions do exist, however, by the ordinary practice of the court, which deserve to be considered. The petitioning creditor may petition to annul before the surrender of the bankrupt (*vide supra*); and even although there has been an adjudication, if the bankrupt be out of the country, and the application be with the consent of the bankrupt's solicitor, and of all the creditors who have proved (*f*); and in the case of a petition presented before the day limited for the surrender (*g*), it is an application to the discretion of the court, whether it will annul the fiat (*h*), or make such other order as will prevent any injury arising to the creditors by the existence of the fiat; as that the fiat be impounded, and the assignees be restrained from setting up their title under it (*i*). In general an adjudication will not be annulled after certificate (*k*), except for fraud (*l*), or unless the invalidity of the adjudication appears clearly on the face of the proceedings (*m*), or unless the adjudication has been decided to be invalid or the like (*n*). But this rule is not imperative; and if the delay be satisfactorily accounted for, the court may still annul (*o*): and where a fiat was sued out by the bankrupt on the 19th September, assignees chosen October 9th, and certificate allowed December 14th, a creditor's petition to annul on December 14th was held not to be too late (*p*). But acts of acquiescence will in such cases bar the petitioner, even though he

(*b*) *Ex parte Jones*, 1 Mon. & A. 442; 3 Dea. & C. 697.

(*c*) *Ex parte Bold*, 1 Cox, 423.

(*d*) See *Ex parte Williams*, 29 L. T. 25.

(*e*) *Ex parte Lane*, Mon. 12.

(*f*) *Ex parte Hopkins*, 1 Rose, 228; *Ex parte Carling*, 2 Glyn & J. 35.

(*g*) *Ex parte Clarke*, 2 Dea. & C. 194.

(*h*) *Ex parte Foulger*, 1 Mon. & A. 457.

(*i*) *Ex parte Clarke*, *supra*.

(*k*) *Ex parte Moule*, 14 Ves. 602; *Ex*

parte Wyatt, 1 Mon. & A. 405; 3 D. & Ch. 665.

(*l*) *Ex parte Poole*, 2 Cox, 227; *Ex parte Cullen*, Buck, 68; and cases (*k*), *supra*; see also *Ex parte Levi*, Buck, 75.

(*m*) *Ex parte Levi*, *supra*.

(*n*) *Ex parte Bass*, 4 Mad. 270.

(*o*) *Ex parte Gregory*, 3 M., D. & D. 572; 8 Jur. 252.

(*p*) *Ex parte Dering*, De G. 398; 16 L. J., Bcy. 3; 11 Jur. 92.

succeed in establishing the original legal invalidity of the adjudication (*q*). Any gross delay will also bar the petitioner, even though the certificate may not have been granted. Thus, where the bankrupt had not obtained his certificate, but the fiat had issued upwards of two years, debts had been proved, and real and leasehold property been sold under the fiat, the court refused to annul on the petition of a creditor (*r*).

HAP. XIII.

Acquiescence or gross delay will bar petition.

As to the petition itself, and the practice relating to it, see Practice on Interlocutory Applications. After an adjournment *sine die* the court will be slow to annul an adjudication at the suit of a single creditor. The obvious suspicion arises that the object of such an application is for the individual benefit of the one creditor who may obtain execution of the assets by diligence and gain a priority over the others (*s*). If a single creditor petition to annul for fraud or collusion, the petition should pray that a new petition for adjudication may be filed; or without praying to annul, that the assignees may be removed and new assignees chosen; but a petition of a single creditor simply to annul for fraud and collusion was dismissed with costs (*t*). This, however, does not seem to be so where the petition to annul is for legal invalidity, at least if it appear that a valid adjudication could not be legally made. Thus, where the petitioning creditor's debt was found to be invalid, and there was no other creditor whose debt was of sufficient amount to support a fiat, the court annulled without a prayer to issue a new fiat (*u*). If it be a petition with the consent of the creditors, the consent is written at the foot of it, and must be signed by all the creditors who have proved. An affidavit must be made of the signatures of the creditors, and laid, together with the petition, before the commissioner.

What petition of single creditor, to annul for fraud or collusion, should pray.

Single creditor may petition in case of legal invalidity.

Petition to annul, with consent of creditors, must be signed by those that prove.

If, upon the hearing, the matter appear clear, the court will at once decide upon the petition and affidavits, without directing an issue to try the validity of the fiat, even although the petitioning creditor should be desirous of trying it (*v*). Where the act of bankruptcy on the proceedings appeared to be insufficient, and there was no affidavit of any other act which would support the commission, and no question raised which could make a trial at law useful, the court superseded the commission without an issue (*x*). Even where the trading, petitioning creditor's debt,

Court will annul without directing issue, if facts clear on the petition and affidavits.

(*q*) *Ex parte Williams*, 29 L. T. 25.

(*u*) *Ex parte Hawkins*, 2 M., D. & D.

(*r*) *Ex parte Maxwell*, 3 M., D. & D. 708.

320.

(*s*) *Ex parte Bacon, Re Parrett*, 13 W. R. 759.

(*v*) *Ex parte Gallimore*, 1 Mad. 67; *Ex parte Gulston*, 1 Atk. 193; *Ex parte Wilson*, ib. 217.

(*t*) *Ex parte Shum*, 1 Dea. & C. 260.

(*x*) *Ex parte Burgess*, Buck, 233.

CHAP. XIII.

and the act of bankruptcy, appear on the face of the proceedings to be sufficient, yet, if the court be satisfied of the insufficiency of any of them from the affidavits, it will annul the fiat, without an issue (*y*). But if the court have any doubts of the facts of the case, then, if the application be made by a creditor, an issue will be directed to try the validity of the fiat (*z*); if the bankrupt, however, bring an action, and thereby establish the invalidity of the fiat, the court will immediately annul it, and will not delay doing so until after another trial, unless under very special circumstances (*a*).

It has been already seen that the rule has been laid down that a bankrupt, having brought an action to try the validity of an adjudication against him, must abandon his action before he is allowed to proceed with a petition to annul, and remarks have been made on the rule in cases in which, it appearing upon a petition to annul that an action has been already commenced to try the validity of the fiat, the court will retain the petition, and defer the consideration of it until the event of the trial at law be known (*b*).

Court directing issue, states its terms, &c. in order.

Upon directing an issue, the court will state the terms of it in the order, and indicate who are to be made plaintiff and defendant, what shall be deemed admissible as evidence, who shall be examined as witnesses, &c. (*c*); and if any other act of bankruptcy than what is stated on the proceedings is to be allowed in evidence, to support the fiat, the defendant will be ordered to give a notice to the plaintiff of the acts on which he relies, and of the evidence by which he intends to prove them, in order that the latter may not be taken by surprise (*d*). When the issue is directed, the court declares when it shall be tried, and will order the petition to stand over until after the trial; in the mean time, and if the plaintiff does not proceed to the trial before that time, or account satisfactorily for not having done so, the court will decide against him (*e*). When the issue is tried, the court will immediately annul the fiat, or dismiss the petition, according to the result of the trial; and it will not direct another issue or trial, unless for very special reasons (*f*). (*See further, as to trial of issues, pp. 755—757; and as to costs, see p. 759 et seq.*)

When issue tried, court annuls fiat or dismisses petition.

Order to annul must cor-

Care must be taken that the order to annul corresponds with the

(*y*) *Ex parte Gallimore*, 2 Rose, 234.
 (*z*) See *Ex parte Collins*, 1 Rose, 373.
 (*a*) *Ex parte Dick*, 1 Rose, 51; but see *Ex parte Eager*, Mon. 85.
 (*b*) *Ex parte Price*, Buck, 230; 3 Mad. 228.

(*c*) See *Ex parte Carter*, 1 Glyn & J. 326.
 (*d*) *Ex parte Bogen*, Buck, 137.
 (*e*) *Ex parte Ranken*, 3 Mad. 371.
 (*f*) See *Ex parte Prosser*, Buck, 77; *Ex parte Bryant*, 2 Rose, 1.

fiat or petition for adjudication, in the names and description of the bankrupt and the petitioning creditor; a variance in this respect would be fatal (*g*). (*See the form of the Order, App., post.*)

Lastly, an advertisement of the annulment of the adjudication must be inserted in the Gazette. (*See the form, App., post.*)

A power of attorney to transact business in courts of law, authorizes the attorney to apply to annul (*h*). But the court refused to entertain a petition of a relative of the bankrupt to annul, on the ground that his being abroad was not with intent to delay his creditors; the petition not being with the bankrupt's privity, and he not making any affidavit in support (*i*).

The annulling of an adjudication renders the certificate and all the proceedings under the adjudication, of no effect (*k*). This is so completely the case that, even where it appeared that the bankrupt had procured the annulling of his adjudication by fraud, yet while the annulling order remained in force, the bankrupt was entitled to support a bill to set aside a sale made by his assignees to a person who had purchased in his own name, but really as agent for himself and the solicitor to the bankruptcy, on a private partnership between them; and this notwithstanding that the ordinary ratification of all sales by his assignees had been required from and executed by the bankrupt as a condition for annulling the adjudication (*l*).

In a recent case (*m*) a devise was made to one for life, with remainder over, and a direction that if the devisee for life should be declared bankrupt, the rents to which he would otherwise be entitled, should sink into the residue. The devisee was adjudicated a bankrupt under the Act of 1861, in the testator's lifetime, but no creditors' assignee was appointed, and five months after the testator's death the bankruptcy was annulled on the bankrupt's own application, he having been in occupation of the property, and no claim having been made by the official assignee. It was held that no forfeiture had ever occurred, because no one had ever claimed or received the rents, the bankrupt having remained in possession of the property.

The estates conveyed to the assignees are divested by annulling the adjudication (*n*); and as the assignees of a bankrupt are not

respond with fiat or petition for adjudication, in names of bankrupt, &c.

Fiat being annulled, certificate, &c. of no effect.

Annulling fiat divests estates conveyed to assignees.

(*g*) *Matthews v. Dickinson*, 1 Moore, C. P. 104.

see also *Elsev v. Adams*, 10 L. T., N. S. 212.

(*h*) *Ex parte Crowther*, 4 Dea. & C. 31.

(*m*) *White v. Chitty*, 14 W. R. 366.

(*i*) *Ex parte Rhodes*, 2 M., D. & D. 41.

(*n*) *Ex parte Bowler*, Buck, 258; *Ex*

(*k*) *Everitt v. Backhouse*, 10 Ves. 94.

parte Smith, Buck, 262, n.

(*l*) *Adams v. Swarder*, 12 W. R. 294;

CHAP. XIII.

But title to property sold under bankruptcy not to be impeached, except within limited time.

Where bankrupt applies to annul, required to confirm sales.

Fiat against two or more may be annulled as to one and stand as to others.

Certain acts done under fiat (afterwards annulled) not invalidated.

Sect. 182 of 12 & 13 Vict. c. 106, as to creditor abandoning action to prove under fiat, which is afterwards annulled.

bound by sales made under a former annulled fiat, they may, under a second fiat, recover back the property, though purchased *bonâ fide* (n). But by statute 12 & 13 Vict. c. 106, s. 131, no title to any real or personal estate sold under any bankruptcy shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the fiat or petition for adjudication, or in any of the proceedings under the same, unless the bankrupt shall, within the time allowed by that act, have commenced proceedings to dispute, dismiss or annul the fiat, petition or adjudication, and have duly prosecuted the same.

This is similar to the 6 Geo. 4, c. 16, s. 87, except that, instead of "the time allowed by this act," it was within twelve months from the issuing the commission. We have seen that in all cases where application to annul is by the bankrupt, the inconvenience likely to arise in this respect is obviated, by making the bankrupt join in or confirm the conveyances of the assignees. And by 12 & 13 Vict. c. 106, s. 97, where the petition for adjudication is against two or more persons, the court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person as to whom such petition is not ordered to be dismissed, nor shall any such person's certificate be thereby affected. But an order to annul a fiat has not for all purposes a retrospective effect so as to invalidate all previous proceedings. So the return of a sheriff of nulla bona to a writ of *fi. fa.* during the subsistence of a fiat, and after the effects are vested in the assignees, is not a false return, by reason of a subsequent order annulling the fiat (o). By 12 & 13 Vict. c. 106, s. 182, any creditor who shall have abandoned his proceedings in any action or suit for his debt, and elects to prove or claim under the fiat or petition for adjudication, may, if the fiat or petition for adjudication be afterwards superseded or dismissed, proceed in the action as if he had not so proved or claimed, and in bailable actions shall be at liberty, under the authority of a judge's order for that purpose, obtained in manner as may now by law be done, to arrest the defendant *de novo*, if he has not put in bail below, or perfected bail above, or may, if the defendant has put in or perfected such bail, have recourse against such bail, by requiring the bail below to put in and perfect bail above, within the first eight days in term after notice in the London Gazette of the first superseding or dismissal of such fiat or petition, and by suing the bail upon their recognizance,

(n) *Gould v. Shoyer*, 4 Moo. & P. 635. 77; 2 D. & L. 217; 8 Jur. 606; 13 L. J., Exch. 305.
(o) *Smallcombe v. Olivier*, 13 M. & W.

if the condition thereof is broken. An order on the petition of the bankrupt, annulling the fiat with costs, will not be extended to the costs occasioned to him by the issuing of the fiat other than those of the proceedings under it (*p*).

By statute 12 & 13 Vict. c. 106, s. 155, all persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the fiat be afterwards superseded, or the adjudication of bankruptcy or petition for adjudication be afterwards annulled or dismissed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him; and all persons who shall, without action or suit, bonâ fide deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person as aforesaid in respect of the same, or any person claiming under him, provided the persons so delivering up any real or personal estate, or paying any debt, shall not have had notice of an action, suit or other proceeding to dispute or annul the fiat or adjudication or petition for adjudication, and such action, suit or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this act.

Persons from whom property recovered by assignees, discharged, though fiat annulled.

This clause is similar to the 6 Geo. 4, c. 16, s. 94, except that instead of the above proviso in the later statute that in the former concludes, "provided such notice to try the validity of the commission had not been given and been proceeded in within the time and in manner aforesaid." An adjudication having been annulled the court ordered office copies of the proceedings to be furnished for the purpose of defending a suit brought in a foreign court by the bankrupt (*q*); but all jurisdiction in the court is destroyed by an annulling order; and where the bankrupt died pending an appeal against an order annulling his bankruptcy, the assets being in the custody of the official assignee, it was held, that the court had no jurisdiction even to make an order as to the disposition of the property nor any declaration of the rights of the parties (*r*).

Jurisdiction of court ceases upon order to annul.

(*p*) *Ex parte Ward*, 3 De G. & S. 580. 14; 5 Jur., N. S. 1190.

(*q*) *Ex parte Sybrandt*, 28 L. J., Bcy.

(*r*) *Re Bianconi*, 10 L. T., N. S. 283.

CHAPTER XIV.

APPEALS.

CHAP. XIV.

THE constitution and jurisdiction of the Court of Appeal has been already treated of, but it remains to say somewhat of the practice on appeals.

Appeals from commissioners must be entered within twenty-one days, and duly prosecuted; now made to Court of Appeal in Chancery.

By sect. 12 of the Act of 1849, every appeal from the decisions or orders of the commissioners to the Vice-Chancellor must be entered within twenty-one days from the date of the decision or order appealed from and duly prosecuted, and such appeal will also be subject to a deposit of costs, to be regulated by general order. For the Vice-Chancellor is now substituted the Court of Appeal in Chancery.

Application to rehear not allowed, except for fraud, or on discovery of new evidence not before discoverable.

This limitation of time cannot be evaded by making an original application to rehear the case, and then presenting an appeal from the order confirming the original order (*a*). The court will not entertain the application to rehear except on grounds of fraud or the discovery of new evidence, which could not have been discovered by due diligence at the time of the original hearing or the like (*b*), in which latter cases all courts may rehear and review their own decisions (*c*); but the limit of time is only enforced as to any appeal when, but for the appeal in question, the order objected to would be final. So, where an appeal had been entered in due time, and then a cross appeal was presented, after the twenty-one days, but before the hearing of the original appeal, the cross appeal was allowed to be heard (*d*). And an appeal has been heard, after the proper time has expired, by consent of the opposing parties (*e*).

Limitation of time applies to acts from which appeals lie.

The limitation as to time is not confined to judicial decisions, but extends also to administrative acts from which it has been held that an appeal lies (*f*).

The time is to be reckoned from the date of pronouncing the order, not from the time it is drawn up (*g*). The case of *Ex parte*

(*a*) *Carter v. Dimmock*, 4 H. of L. Ca. 337; see next case.

(*b*) *Re Plumstead and Woolwich Water Co.*, 2 De G., F. & J. 20.

(*c*) *Ex parte Jackson*, 3 Dea. 651; *Ex parte Greenwood*, 1 M. & Ay. 66; 3 D. & Ch. 398; *Ex parte Simpson*, 1 M. & Ay. 565; *Ex parte Thompson*, 3 D. & Ch. 617;

Ex parte Imbert, 1 De G. & J. 157.

(*d*) *Re Streatfield*, *Ex parte McKenna* and *Ex parte Bank of England*, 30 L. J., Bcy. 24; 7 Jur., N. S. 668; 9 W. R. 674.

(*e*) *Ex parte Bateman*, January 12th, 1856, Archb. on Bcy. 11th ed. 465.

(*f*) *Ex parte Ford*, 5 De G., M. & G. 398.

(*g*) *Ex parte Dudley and West Brom-*

Heslop, which is cited as deciding the reverse of this, seems to have rested on its special circumstances (*h*).

An exception exists, however, to this provision as to the time for appealing, in the case of an application to the Court of Appeal or the Lord Chancellor to annul an adjudication for want of the requisite conditions (*i*).

By sect. 233 of the Act of 1849 it is provided, that if the bankrupt shall not (if he were within the United Kingdom at the date of the adjudication) within twenty-one days after the advertisement of the bankruptcy in the London Gazette, or (if he were in any other part of Europe at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action, suit or other proceedings to dispute or annul the fiat, or the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged bankrupt, that such person so adjudged bankrupt became a bankrupt before the date and suing forth of such fiat, or before the date and filing of the petition for adjudication, and that such fiat was sued forth, or such petition filed, on the day on which the same is stated in the Gazette to bear date.

Advertisement in the London Gazette conclusive evidence of fact and date of bankruptcy, if time for appealing allowed to elapse.

Sect. 24 of the act 17 & 18 Vict. c. 119 amends the section next above mentioned by extending the time from twenty-one days to two calendar months. It was argued in the case below cited that an application to annul an adjudication was an original application and ought to be made before the commissioner, but held that though it might in some cases be treated as an original application it might be also considered as an appeal, and in such case it might nevertheless be presented at any time within two calendar months from the order for adjudication.

Time for appealing extended.

It has been held likewise that, except within the 104th section of the Act of 1849, which allows the bankrupt seven days or an extended time not more than fourteen days from notice of adjudication served on him, to show cause against it and stay the advertisement, an application to annul for want of the requisite conditions

Except under sect. 104 of Act of 1849, application to annul for want of legal conditions must be

wich Banking Co., 32 L. J., Bcy. 68; 9 Jur., N. S. 702; 11 W. R. 576.

(*h*) *Ex parte Heslop*, 1 De G., M. & G. 477.

(*i*) *Ex parte Miller*, 11 W. R. 80; 32 L. J., Bcy. 45; 7 L. T., N. S. 657; 1 N. R. 184.

CHAP. XIV.

made to Court
of Appeal.

Deposit on
appeals regu-
lated by Order
of 19th Oct.
1852.

Amount of
deposit fixed
by commis-
sioner on
application.

Deposit in
County Court
appeals.

Appeals to
Court of Ap-
peal to be
brought on by
motion.

Except by
leave of Court
of Appeal no
new evidence
allowed of
issues before
court below.

ought to be made only to the Court of Appeal, and that the commissioner has no jurisdiction to entertain it (*j*). Another exception exists in the case of an appeal against the grant or refusal of an order of discharge, as to which the limitation is thirty days, Act of 1861, section 171.

The deposit on appeals has since been regulated by General Order of the 19th October, 1852, rule 29: "At or before the time of entering an appeal against a decision or order of the Court of Bankruptcy, the party intending to appeal shall, in any case not otherwise specially provided for, deposit with the chief registrar such sum, not being less than 10*l.* and not exceeding 40*l.*, as the commissioner whose order or decision is appealed from, or some other commissioner of the same court, shall direct, to satisfy so far as the same may extend any costs that the appellant may be ordered to pay; and in the absence of any directions of a commissioner as to the amount of deposit, the sum of 20*l.* shall be so deposited. If it shall appear that there are several respondents in separate interests, the commissioner, if he shall think fit, may order a separate deposit as to every such respondent."

The solicitor of the petitioner must make application to the commissioner to fix the amount of deposit, who makes his order on such application.

In county court appeals the deposit is settled by the 65th rule of the County Court Orders of 1st July, 1863, which is similar to that just set out.

By General Order of the 12th October, 1861, rule 32, all appeals to the Court of Appeal shall be brought on by motion, but no new evidence shall be received on any appeal, unless the Court of Appeal shall on the hearing thereof so direct.

The rule as to new evidence is however confined to new evidence on the issues which were before the court below; evidence may be offered of what passed in the court below (*k*), or it would seem since the hearing below (*l*).

On an appeal from an order of the commissioner, that a debtor summoned under the 78th sect. of the Act of 1849 should give a bond, the Court of Appeal heard the creditor and debtor, but refused to hear other witnesses (*m*).

An application to the judge of the Court of Bankruptcy in Ireland, to annex a statement to the schedule of evidence, that a point intended to be raised on appeal had not been raised below,

(*j*) *Carter v. Dimmock*, 4 H. of L. Ca. 337.

(*k*) *Re Lascelles*, 2 Law Reports, E. S. 127.

(*l*) *Ex parte Page, Re Neal*, 32 L. J., Bcy. 14; 1 De G., J. & S. 283.

(*m*) *Ex parte Sheward*, 3 De G. & S. 609; 14 Jur. 190.

CHAP. XIV.

was refused, but the registrar was directed to mention the fact to the Court of Appeal on the hearing of the case (*n*).

In County Court appeals, by Rule 66 of the County Court Orders, 1st July, 1863, where the appeal is against a judgment for allowing, refusing or withholding the order of discharge, notice of the appeal, stating the grounds on which the party appeals, shall be left with the registrar, who shall forthwith enter the time and nature of every such appeal, and shall afterwards file such notice. By rule 67 of the same order all affidavits to be made in support of such appeal, as in the last foregoing rule mentioned, shall be filed at the time of filing the petition of appeal. It is to be remarked that though petitions of appeal are mentioned in this order there are now, properly speaking, no such things, appeals being by way of motion: it is apprehended that in the last place where the word petition is used "notice" should be substituted.

Under County Court Orders notice of appeal to be left with registrar.

A special case is still the only form in which an appeal can be carried in bankruptcy to the House of Lords. (See 14 & 15 Vict. c. 83, s. 30.)

Appeals in bankruptcy to House of Lords to be in form of special case.

By the 17th section of the Act of 1849 all appeals to the Vice-Chancellor or Lord Chancellor, and all affidavits and documents to be used on the hearing of any such appeal, shall be entered in the office of the chief registrar, and the Vice-Chancellor sitting in bankruptcy shall, on the hearing of such appeal, be attended by some one of the registrars of the Court of Bankruptcy.

Affidavits and documents to be used on appeal filed with chief registrar.

The Court of Appeal, which is substituted in the appellate jurisdiction for the Vice-Chancellor, as below mentioned, will not deal so strictly in the construction of these clauses as to extend them according to the letter beyond the intention. Thus, in the case of the *Hull Bank* (*o*), an appeal by a bankrupt against the refusal of his certificate, was accidentally not presented at the proper office until after the office was closed, on the last day allowed for appeal, but was, on the evening of the same day, tendered to the officer at his private residence. The court allowed it to be entered as of the day it was intended to have been entered; and in a very similar case, where the appeal was by accident delayed in like manner, and tendered to one of the clerks of the office at his residence, who, doubting his authority, declined to receive it; the court ordered it to be received as of the day it was intended to be entered, but in this case without prejudice to any objection (*p*). But though, where accident was the only cause of an appeal not being entered in time, the court has thus construed the section liberally, it will

Court of Appeal has construed limitation of time liberally, if satisfied that delay caused by unavoidable accident or fraud.

(*n*) *Re Craig*, 8 Ir. Ch. 214.
(*o*) 27 L. J., Bcy. 16.

(*p*) *Ex parte Harrison*, 2 De G. & J. 229.

CHAP. XIV.

not extend the time in any other case, except perhaps where the fraud of a respondent may have delayed the appeal. Thus, a contributory neglected to appeal against an order of the commissioner acting in the winding-up of a company, under the Act 19 & 20 Vict. c. 67, until after the expiration of the twenty-one days; it was held that his petition was too late and could not be considered on its merits (*q*).

Former practice as to service of petitions of appeal.

The fiat on the petition formerly, while appeals were by petition, directed the attendance of parties thereon to be on the eighth day from the day of presenting such petition. The petition must have been served four days before the expiration of the time at which the attendance thereon was ordered. The above directions were to be without prejudice to any application to the court in respect of either the attendance of, or service upon, parties, on the hearing of the petition. And the eight days and four days respectively, in the directions above mentioned, were taken as inclusive of the days of presenting and of serving such petitions respectively, and exclusive of Sundays, although an intermediate day. Service of the petition on Thursday, the day of hearing being the Monday following, was not a sufficient compliance with the order (*r*). The period of eight days, mentioned in this order, might be enlarged on motion as of course, but to lessen it required a special application (*s*); but if the time for service had elapsed, the petition must have been re-answered, and it was of course at the office to re-answer (*t*); and where two out of three respondents had been served with the petition, the court, on payment of the costs of the day, ordered it to be re-answered for the purpose of serving it on the third respondent (*u*). A petition of appeal against the allowance of the certificate must have been served personally upon the bankrupt (*x*). An admission by the solicitor of the bankrupt, that the bankrupt was acquainted with the contents of the petition, was not sufficient (*y*), and the same rule as to service will clearly apply to a notice of motion with the same end. Of course all persons, parties to and interested in the order, should be served with notice of the appeal; thus it was held, that where two creditors only opposed the certificate before the commissioner, they must be served with the petition of appeal, but whether such would be the practice if a large number opposed, quære? for the creditors in such a case can act through the assignees (*z*): and it seems it is in

(*q*) *Ex parte Clarke*, 2 De G. & J. 245; 27 L. J., Bcy. 25; 4 Jur., N. S. 800.

(*r*) *Ex parte Daniel*, 7 Jur. 290.

(*s*) *Ex parte Beardsworth*, 1 Dea. & C. 369.

(*t*) *Ex parte Hanks*, 2 Mon. & A. 383.

(*u*) *Ex parte Potter*, 1 Dea. 287.

(*x*) *Ex parte Harford*, Buck, 38.

(*y*) *Ex parte Levy*, 4 Dea. & C. 224.

(*z*) *Ex parte Johnson*, 4 De G. & S. 25; 20 L. J., Bcy. 20; 15 Jur. 185.

such a case the duty of the assignees to oppose, and, if they do not, they will probably be charged personally with the increased costs incurred by the appearance of the creditors (a).

Appeals being now by motion, notice of the application is presented at the office within the time limited, and notice of motion must be served on the respondents four clear days before the day named in the notice for hearing, in the same manner as other notices of motion are served.

Notices of motion on appeals, how presented and served.

It has, indeed, been held not to be necessary that formal notice of appeal should be entered at the chief registrar's office within twenty-one days, provided that notice has been duly served on the respondents within that time, on the ground that the words of the section are not applicable to appeals by way of motion (b). But this is open to doubt, for appeals might at any time, under the Act of 1849, have been entertained on motion, and were occasionally so entertained. The words of the 12th section seem, nevertheless, express (c).

Appeal motions being set down for hearing in the paper of appeals are called on in their order (d), and the general rules of practice applicable to the hearing of the matters in the paper generally apply to the hearing of the paper of appeals.

Practice as to hearing of cases in paper of appeals, same as of general appeal paper.

The Court of Appeal acts not as a Court of Cassation merely, but, having obtained jurisdiction in the matter by the presentation of an appeal, it will proceed to make such order as may seem to it right; in this it follows the practice of the Great Seal formerly, and of the Court of Review and of the practice in Chancery. It is, however, still a Court of Appeal, and will not, at least as a general rule, entertain an original application, though it may be doubted whether it is not fully empowered to do so, as all the jurisdiction "original and appellate" of the Vice-Chancellor in bankruptcy is in terms transferred to it. Still even under the old law it was held, that a creditor could not petition the court above to be at liberty to prove for a greater sum than he had attempted to prove in the court below; on the ground that if he did so, it would not be an appeal from the decision below (e).

Court of Appeal in bankruptcy not restricted as to order to be made.

The appeal to the House of Lords in bankruptcy is, like all the other jurisdiction of the court, strictly statutory, and is only on matters of law or equity, or the rejection or admission of evidence,

Appeals to House of Lords only in matters of law or

(a) See *Ex parte Greenwood, Re Monk and Brooks*, 12 W. R. 924; *Ex parte Brook*, 8 L. T., N. S. 375.

(b) *Ex parte Bromley, Re Redfearn*, 12 L. T., N. S. 293; 13 W. R. 667.

(c) *Ex parte Imbert*, 1 De G. & J. 152.

(d) *Ex parte Lewis*, 31 L. J., Bcy. 11;

Bootle v. Blundell, 19 Ves. 500; *Kebel v. Philpot*, 9 Sim. 614; *Stace v. Mabbot*, 2 Ves. jun. 552; *Lord Faulconberg v. Peirce*, 1 Amb. 210; *Cleeve v. Gascoigne*, ib. 323; see *Locke v. Colman*, 2 M. & Cr. 42; see also *Daniell's Ch. Pr.* 1071, 1072, 2nd ed.

(e) *Ex parte Fry*, 3 Mad. 132.

CHAP. XIV.

equity, or of evidence.

Application for leave to appeal must be made promptly.

Question must be of importance as well as difficulty.

Court will, under circumstances, suspend proceedings under an order, pending an appeal.

and even on these matters such an appeal is not of right, but leave must be obtained from the court appealed from (*d*).

Application for leave to appeal must be made speedily, for if subsequent proceedings have been taken on the foundation of the order complained of, without notice having been given of the intention of the complainants to appeal, leave will not be granted, although the difficulty and importance of the question would otherwise have sufficed to induce the court to grant such leave (*e*).

The question involved must be of sufficient importance, as well as of sufficient difficulty, to justify the court in giving leave to appeal to the House of Lords; and, on a question of the retaxation of a solicitor's bill of costs against the assignees, the Court of Appeal in Chancery did not think it a question of sufficient importance to justify the giving leave to appeal to the House of Lords (*f*).

Where the Court of Appeal, differing from the commissioner, and holding the petitioning creditor's debt to be sufficient, referred it back to the commissioner on the question of the validity of the adjudication; an application for leave to appeal to the House of Lords from the decision as to the sufficiency of the debt was held to be premature, and was ordered to stand over until the commissioner had given his decision (*g*).

The court will, under circumstances, suspend proceedings on an order, pending an appeal; as where the party to whom money is ordered to be paid, resides out of the jurisdiction, and there is a probability of a different decision being given on the appeal; but the mere fact of the appeal without such probability is not sufficient to induce the court to order a party out of the jurisdiction to give security for, or pay into court, a sum of money, to which by the order appealed from he was declared to be entitled (*h*); or to stay proceedings under an order to annul (*i*): so also where the Lord Chancellor reversed the judgment of the Court of Review, and referred the matter back with consequential directions, but without an order to stay proceedings, the appeal of a party to the House of Lords is no reason for the court to stay proceedings on the reference, although it may exercise a discretion as to the making any consequential order until the appeal is heard (*k*); and where a party is under an order for commitment

(*d*) *Re Newton*, 31 L. J., Bcy. 81, 82.

(*e*) *Ex parte Marcus*, 3 Jur., N. S. 602.

(*f*) *Ex parte Bateman*, 18 Jur. 455; 23 L. J., Bcy. 8.

(*g*) *Ex parte Griffiths, Re Mostyn*, 17 Jur. 655; 3 De G., M. & G. 174; 22 L.

J., Bcy. 50.

(*h*) *Ex parte Davidson*, 3 Dea. & C. 447.

(*i*) *Ex parte Hinton*, 2 Dea. & C. 407.

(*k*) *Ex parte Pollard*, 1 M., D. & D. 264; Mon. & C. 643.

for nonpayment of costs, the court will not suspend the order pending an appeal, except upon payment of the money into court (*l*).

The Court of Appeal will not entertain an appeal from the commissioner's decision, refusing to put a particular question at a private meeting (*m*).

An appeal lies in insolvency as well as bankruptcy, since the transfer of the insolvent jurisdiction to the court (*n*).

The appeal to the House of Lords is, as has been shown, to be made by special case, to be approved and certified by one of the judges of the Court of Appeal.

Special Case.]—By 14 & 15 Vict. c. 83, s. 10, the appeal from the decisions of the Lords Justices of Appeal in Chancery, in matters of bankruptcy, shall be only on matters of law or equity, or on the rejection or admission of evidence, and on a special case to be approved and certified by one of the judges of the Court of Appeal thereby constituted, whose determination on the settlement of such case shall be final and conclusive. If the judge, in settling a special case, either admits or rejects matters improperly, an application should be made to him to rectify the error, before appeal brought. The counsel for the appellant, in applying to a judge for a special case, is bound to state the ground of appeal. A special case should state the conclusion of facts found by the court below, and not the evidence by which the facts were proved; therefore when it set forth the evidence by which a certain fact was attempted to be established in the court below, accompanied by a conclusion stated as the inference of the court drawn from the evidence, it is not within the terms of the statute (*o*); in fact the rule is the same in the case of a special case as in that of a special verdict (*p*). For this reason, if a matter of foreign law be involved in the case, the actual conclusion of foreign law in its application to the facts of the case should be found, and not merely the statements of foreign law from which that conclusion may be drawn, for those statements would in such case only be evidence of the conclusion which is itself the material fact, and which, therefore, ought to be conclusively determined by the Court of Appeal, and not left open to any argument in the House of Lords. The settlement of the special case by the judge is final (*q*).

Special case for appeal from Lords Justices to House of Lords must be approved and certified by one of the judges of the Court of Appeal.

What special case should contain.

(*l*) *Ex parte Fox*, 2 Mon. & A. 18.

(*m*) *Ex parte Maw*, 13 W. R. 302.

(*n*) *Ex parte Perkins*, 13 W. R. 1001.

(*o*) *Ex parte Wilson*, 3 Dea. 214; *Ex*

parte Nash, 12 Jur. 637; 13 Jur. 292.

(*p*) *Hubbard v. Johnstone*, 3 Taunt. 209;

Mires v. Solebay, 2 Mod. 244.

(*q*) *Ex parte Low*, 1 Mon. & A. 189.

CHAPTER XV.

ASSIGNEES.

CHAP. XV.

Court, on adjudication, appoints official assignee.

Court might appoint, under sect. 43 of Act of 1849, official assignee to act with existing assignees.

Upon transfer of proceedings in bankruptcy from one court to another, a new official assignee to be appointed to replace the former one.

The official assignee is to be deemed the sole assignee till appointment of a creditors' assignee.

A CERTAIN number of official assignees are attached to the different district courts of bankruptcy, to act in the bankruptcies which fall within the jurisdiction of such courts, and upon each adjudication the court immediately appoints one of them to act in the matter of such bankruptcy, and the court is, by 12 & 13 Vict. c. 106, s. 102, bound to make such appointment.

Sect. 43 of the Act of 1849 provides that the court might, at discretion, appoint an official assignee to act with the existing assignees, if any, under any fiat which had been or might be removed into court, and might direct the existing assignees to pay and deliver over to such official assignee all monies, books, papers and effects whatsoever in their possession or custody as such assignees; and that all the real and personal estate of the bankrupt under such fiat should immediately on such appointment vest in such official assignee jointly with the existing assignees, if any, in like manner as if the proceedings in the bankruptcy had originally been commenced by virtue of that act, without prejudice to any action or suit commenced or any contract entered into by the existing assignees at the time of the commencement of that act.

Whenever, under sect. 88 of the Act of 1861, any transfer shall be made of proceedings from one court to another, the court to which the transfer is made may remove the official assignee and appoint a new official assignee in the bankruptcy. By sects. 141 and 142 of the Act of 1849, before stated, the property of the bankrupt personal and real becomes vested in the assignees by virtue of their appointment. It has been already shown what property is included in those sections.

By sect. 40 of the Act of 1849, until assignees shall be chosen by the creditors of the bankrupt the official assignee shall, to all intents and purposes whatsoever, be deemed to be the sole assignee of the bankrupt's estate and effects, and, if the court shall so order, may, before assignees shall be chosen by the creditors, sell or otherwise dispose of any property of a bankrupt which shall be of

a perishable nature, or the holding possession whereof until the choice of assignees would in the judgment of the court be prejudicial to the bankrupt's estate; and it is thereby provided, that nothing therein contained shall extend to authorize any official assignee to interfere with the assignees chosen by the creditors, in the appointment or removal of a solicitor or attorney, or, after such choice, in directing the time and manner of effecting any sale of a bankrupt's estate or effects.

This clause has already been noticed and commented on in the Chapter on the Realization of the Assets.

It seems, however, that where there are no assets the official assignee is not compellable to act in the bankruptcy without an indemnity; and if no creditors' assignee will accept office, the course has been followed of annulling the bankruptcy, at least, where the adjudication was not at the instance of a creditor (*a*).

Under the Act of 1849, and even prior to that act, ever since the first appointment of official assignees, the bankrupt's estate, upon the appointment of creditors' assignees, became vested in them along with the official assignee as joint tenants, and upon the death of one the estate survived to the others (*b*) until a new assignee was appointed; who thereupon became, it is submitted, joint tenant with the survivors or survivor.

The Act of 1861, sect. 117, has made an alteration in this state of things. "Upon the appointment of the creditors' assignee all the estate, both real and personal, of the bankrupt, shall be divested out of the official assignee, and vested in the creditors' assignee."

This section is, however, interfered with for some purposes by sect. 128 of the same act, which provides, that the official assignee shall collect, realize and recover every debt due to the estate the amount of which shall not exceed the sum of ten pounds, and shall pay all sums so collected, realized and recovered, forthwith into the bank of England, or otherwise in manner in the next preceding clause provided; and as to all such sums of money he shall be and shall be deemed sole assignee of the estate, notwithstanding the appointment of a creditors' assignee.

This section seems to except the debts under 10*l.* from the operation of the vesting clause as to the creditors' assignee, and the position of the official assignee as to the money when recovered is, to say the least, doubtful and anomalous. By the words of the act he is sole assignee of the debts, and therefore of the monies realized in respect of such debts, and, strictly speaking, he would

Official assignee how far bound to act, where no assets.

Where no creditors' assignee will accept office, bankruptcy annulled in certain cases.

Formerly the bankrupt's estate vested in official and creditors' assignees jointly.

Under the Act of 1861 whole estate directed to vest in creditors' assignees on their appointment.

But by sect. 128 official assignee bound to collect, &c., all debts not exceeding 10*l.*

Doubtful position of the official assignee as to debts under 10*l.*

(*a*) *Re Jackson*, 5 L. T., N. S. 527. (*b*) *Man v. Ricketts*, 9 Jur. 1103.

CHAP. XV.

Semble, right of action for debts under 10*l.* given to official assignee; the monies when recovered, vest in creditors' assignee.

On misconduct of creditors' assignee, court may remove him and appoint official assignee, &c.

No provision in the Act of 1861 to re-vest the estate in the official assignee appointed under sect. 139.

as to this money be a sole trustee after payment of costs for the creditors, so that one dividend should be declared out of his trust fund, and another out of the trust fund of the creditors' assignees.

Practically, however, the effect of the section is supposed to be to give the official assignee the right of action for these debts, and the power to compound for them with the sanction of the court without the interference of the creditors' assignee; but, after recovery, the sum would be paid to the account of the bankrupt's assets generally, and become mixed up with the other estate, and vested in the creditors' assignee.

Again, by sect. 139 of the Act of 1861, on the misconduct of a creditors' assignee the court may remove him, and it shall be lawful for the court either to appoint an official assignee to act jointly with such creditors' assignee, or to remove such creditors' assignee, and direct a choice of another creditors' assignee, or to appoint an official assignee alone to wind up and administer the estate under the bankruptcy.

It has been held, that a creditor to move under this section must have proved his debt, and have had his proof admitted (c).

It is remarkable that there is no clause re-vesting the bankrupt's estate in an official assignee, thus appointed to wind up and administer the estate, and it cannot be said that his appointment for that purpose under this section will in every case *per se* have that effect, for if so, and if there was a creditors' assignee who was not discharged, the official assignee would in that case have the estate vested in him contrary to the intention expressed in the act, that the estate should be vested in the creditors' assignees alone. It seems that this is a *casus omissus* from the Act of 1861, but the probability is that the court would hold that the power to appoint an official assignee under this section carried with it the power to appoint him with all the rights, powers and incidents necessary or convenient for carrying out the intention of his appointment, and among them the right of property in the bankrupt's estate. It might be answered, that the court would have jurisdiction in such case to direct and compel the defaulting creditors' assignee to execute a conveyance, and that there is no necessity for the appointment in itself vesting the estate in the official assignee, and that in cases where the court thought the estate should be vested in the official assignee, it could direct a conveyance to him, leaving the estate in other cases in the creditors' assignee. In a matter of such doubt the present writer is unwilling to do more than offer an opinion, that the strict construction would leave the estate

(c) *Ex parte Meiszner*, 10 L. T., N. S. 354.

where it might happen to be, and would not vest it under this section in the official assignee.

A similar remark applies to another clause in the same act. By sect. 182, where the creditors' assignee has obtained an order of discharge, the official assignee first appointed in the matter of the bankruptcy shall, as to any estate and effects of the bankrupt not realized at the time of such order of discharge, and as to all debts then remaining uncollected, and which shall not have been sold in manner therein provided, and as to any future-acquired property of the bankrupt, if made liable to the creditors under the conditions of discharge, represent the estate in all respects as the sole assignee thereof, and shall have and exercise all the rights, duties, powers and authorities conferred by the Act of 1861 upon official and creditors' assignees.

A similar omission as to sect. 182.

But, as to this section, it may be strongly argued that the latter words are sufficient to vest the estate in the official assignee, and such is the present writer's opinion. Sect. 229 of the Act of 1861 may, perhaps, be held to supply the defect remarked on as to the two former clauses; "assignee" is there defined to mean the assignee of the estate and effects of the bankrupt or petitioner, chosen by the creditors; and until such assignee shall be chosen, or where no such assignee shall exist, shall mean the official assignee. There remains the case where the sole creditors' assignee dies, in which case the official assignee has still no estate except in the debts under 10*l.*, and the course seems to be to apply for the appointment of a new creditors' assignee in whom the estate will, it is apprehended, vest upon his appointment.

Defect possibly supplied by interpretation clause of the Act of 1861.

By 12 & 13 Vict. c. 106, s. 42, on the death or removal of any official assignee who shall have been appointed to act in any bankruptcy, the court shall have power to appoint another official assignee to act in such bankruptcy.

Strictly speaking, taking this section in conjunction with the 141st and 142nd of the same act, which are all unrepealed, the appointment of the new official assignee would vest the whole unadministered estate in him as a joint tenant with the creditors' assignee; and this, although the official assignee, whom he succeeds, has had the estate divested out of him by the provisions of the Act of 1861. This seems to be another *casus omissus* from the latter act, unless the 141st and 142nd sections of the Act of 1849 be read as applying only to the case of a first appointment of assignees; which construction would still leave the difficulty that, on the dismissal or death of a creditors' assignee and the appoint-

CHAP. XV.

Powers in bankrupt exercisable for his own benefit, except nomination to vacant benefice, may be executed by assignees.

Joint action of official and creditors' assignees necessary to execute such powers, *quære*.

Assignees are trustees for creditors and cannot buy assets, nor the interest of creditors therein.

Assignees not allowed for business done as accountants.

Creditors' assignee need not be a creditor, nor prove if a creditor.

Assignee, not having proved, not bound to come in under the bankruptcy.

ment of a new one, there would be no estate vested in the new assignee. Either construction is equally inconvenient.

By sect. 147 of the Act of 1849, all powers vested in any bankrupt, which he might legally execute for his own benefit, except the right of nomination to any vacant ecclesiastical benefice, may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same.

There does not seem to be anything in the Act of 1861 to divest this right out of the official assignee on the appointment of a creditors' assignee, and it is therefore submitted that to the execution of all such powers as are comprised in this section, the joint action of the assignees is still requisite notwithstanding the 117th section of the Act of 1861.

The assignees of a bankrupt are mere trustees for the creditors, and will be treated with strictness, as such an assignee cannot purchase the assets of the bankrupt, nor the interest of a creditor therein, without subjecting himself to the ordinary rules which prevail in the case of a purchase by a trustee of a portion of the trust estate, not even though the purchase be for the benefit of the estate; the onus of supporting such a transaction will be thrown upon him, and he must show the fullest *bona fides*, and adequate consideration for the purchase (*c*). So, where a creditors' assignee, formerly a customer and large creditor of the bankrupt, finding a quantity of unsaleable raw material in the hands of the bankrupt, worked it up and then purchased it at the market value, debiting himself with the price in account with the estate; it was held that he could not sell to himself, and was chargeable with 20*l.* per cent. on the price as money in his hands not paid over in due time (*d*). So, where the assignees were accountants they were not allowed to charge the estate for business done by them as such (*e*).

The creditors' assignee need not be a creditor, although he usually is so; nor, if he be, need he have proved his debt under the bankruptcy. It has been determined that an assignee, who has not proved under the commission, may commence or prosecute any action or suit against the bankrupt for the recovery of the debt due to him, his acceptance of the office of assignee not being deemed an election to come in under the bankruptcy (*f*). But the assignee should be a person who has no interest adverse to that of the creditors; and, therefore, the bankrupt himself, although he may

(*c*) *Pooley v. Quilter*, 2 De G. & J. 327; 27 L. J., Ch. 374; 4 Jur., N. S. 345; see *Ex parte Reynolds*, 5 Ves. 707; *Ex parte Badcock*, M. & M'A. 231; *Ex parte Gover*, De G. 349.

(*d*) *Ex parte Ridgway, Re Perry*, 11 L. T., N. S. 467.

(*e*) *Ex parte Read*, 1 Gl. & J. 77.

(*f*) *Jackson v. Irvin*, 2 Camp. 48; *Tappenden v. Burgess*, 4 East, 230.

have proved a debt under his own bankruptcy (*g*), and although he may, as it seems, vote in the choice of assignees (*h*), cannot be himself assignee, even after he has obtained his certificate (*i*); neither can the solicitor to the bankruptcy (*k*); and where he was the only creditor who had proved, the choice was for that reason adjourned. As the creditors, however, in their discretion, may choose whom they will, the legislature have thought it necessary to vest a controlling power in this respect in the court, who, upon petition, may order the assignee, if ineligible, to be removed, and a new assignee appointed, as hereinafter mentioned; and in one case, where a person, who had an interest adverse to a large party of the creditors, was chosen assignee, the Chancellor exercised this control, by appointing an agent or inspector to act as assignee on their behalf (*l*). Besides which, by stat. 12 & 13 Vict. c. 106, s. 139, the court has power to reject any person so chosen who shall appear to such court unfit to be an assignee, or to remove any assignee, and upon such rejection or removal a new choice and appointment of another assignee shall be made in like manner.

The bankrupt cannot be assignee, nor can the solicitor to the bankruptcy.

Court may order assignee chosen by creditors to be removed and another appointed.

There is in the Act of 1861 no express repeal of this 139th section of the Act of 1849; but, by sect. 116 of the Act of 1861, it is provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be such assignee, and upon such rejection a new choice of a creditors' assignee shall be made.

The discretion of the court in this, as in other matters, is subject to appeal (*m*). Usually two assignees, sometimes three or more, sometimes one only, are chosen, in proportion to the magnitude of the bankrupt's concerns.

Court's power is subject to appeal.

It seems open to some doubt, however, whether the 139th section of the Act of 1849 is intended to be virtually repealed, or limited by the Act of 1861; since, although it is not in terms abrogated, there are two points in particular in which it differs from the sections having a similar aim in the latter act; first, as to the choice of assignees; secondly, as to their removal.

Whether sect. 139 of Act of 1849, repealed or limited by the Act of 1861, doubtful.

By 12 & 13 Vict. c. 106, s. 139, at the first public sitting appointed by the court under any bankruptcy, or at any adjournment

At the first public sitting, or its adjourn-

(*g*) See ante, *Proof of Debt*.

(*h*) See case cited, note on *Ex parte Jackson*, 2 Rose, 221; also Cooke, 4th ed. 498; Green, B. L. 260.

(*i*) *Ex parte Jackson*, 2 Rose, 221.

(*k*) *Ex parte Rice*, Mon. 259; *Re Grimsdale*, 28 L. T. 207.

(*l*) *Ex parte Miles*, 2 Rose, 68; 3 Ves.

& B. 139; and see *Ex parte De Tasted*, 1 Rose, 324; 1 Ves. & B. 280; *Ex parte Martell*, 1 Rose, 325; *Ex parte Basarro*, 1 Rose, 266; *Ex parte Simpson*, 2 Rose, 337.

(*m*) *Ex parte Candy*, Mon. & M'A. 197; see *Ex parte Bates*, 1 De G., M. & G. 452.

CHAP. XV.

ment, assignees are, under sect. 139 of the Act of 1849, to be chosen and appointed by creditors proving debts of 10*l.* or upwards;

the court having power of rejection or removal.

This power of removal held to be limited to first sitting or adjournment; *sed quære.*

Under sect. 116 of the Act of 1861, creditors who have proved debts of any amount may choose, but court has power of rejection.

By sect. 124, creditors may at any meeting duly called remove, and one-fourth in value of creditors may petition court to remove, assignee or manager; and a single creditor may petition for meeting to appoint a new assignee in place of one dying, &c.

thereof, assignees of the bankrupt's estate and effects shall and may be chosen and appointed, and all creditors who have proved debts to the amount of 10*l.* and upwards shall be entitled to vote in such choice, and also any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath, before the court, *vivâ voce*; and the choice and appointment shall be made by the major part in value of the creditors so entitled to vote; provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be an assignee, or to remove any assignee, upon which rejection or removal a new choice and appointment of another assignee shall be made in like manner.

It has been held that the power of removal under this section is limited to the first meeting for choice of assignees (*n*); but this seems open to doubt; there was no other power of removal given by the Act of 1849, and the power of removal seems distinguished from that of rejection, which would be the proper power to be exercised at the first meeting for choice of assignees.

By sect. 116 of the Act of 1861, at the first meeting of creditors, or any adjournment thereof, it shall be competent to the majority in value of the creditors who have proved debts to choose an assignee or assignees of the bankrupt's estate and effects, and to be called the creditors' assignee; provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be such assignee, and upon such rejection a new choice of creditors' assignees shall be made.

By sect. 124 of the same Act, a majority in number and value of the creditors may, at any meeting duly called for the purpose, remove the creditors' assignee or manager or accept of his resignation; and one fourth in value of the creditors who have proved may at any time apply to the court, by petition, for the removal of the creditors' assignee or manager, and if on the hearing of such petition the court shall be of opinion that sufficient reason has been shown, it may remove such creditors' assignee or manager, and appoint a meeting of the creditors to be held for electing a new creditors' assignee; and if the assignee shall die, resign, or be removed, or remain abroad for three months at any one time, any creditor may apply to the court to appoint a meeting for electing a new creditors' assignee, and the court may accordingly appoint a meeting, whereof at least seven days' previous notice

(*n*) *Ex parte Meiszner*, 10 L. T., N. S. 354.

shall be given in the London Gazette, and such meeting may elect a new creditors' assignee accordingly.

Again, by sect. 139 of the same Act, if the creditors' assignee shall wilfully fail to observe any of the directions therein contained, or shall be guilty of any neglect in the performance of his duty, or it shall be made to appear to the court, on the application of any two or more creditors, that it would be for the benefit of the estate that such creditors' assignee should not continue to have the management and administration of the bankrupt's estate, it shall be lawful for the court either to appoint an official assignee to act jointly with such creditors' assignee, or to remove such creditors' assignee, and direct a choice of another creditors' assignee, or to appoint an official assignee alone to wind up and administer the estate under the bankruptcy.

Thus, in the one act, the choice is directed to be made only by the creditors who have proved debts of 10*l.* or upwards; in the other, by all the creditors who have proved. As to so much the repeal of the earlier section by the later seems clear, as they are obviously inconsistent. In each act there is a control given to the court to reject an assignee chosen, but the chief difficulty will arise as to the power of the court to remove an assignee once appointed. By the earlier act the power is general, to remove any person appearing to the court to be unfit to be an assignee, and it was open to any person interested under the bankruptcy to put the court in motion (*o*). By the later act two special provisions are made for removing an assignee, and the question to be settled is, whether these narrower powers of removal, which would be altogether unnecessary if the general power remained, do not afford a necessary implication that the wider power is taken away, and the jurisdiction to remove an assignee confined to the limits provided by the Act of 1861. If an opinion may be hazarded, it would seem to the present writer that the mode prescribed by the Act of 1861 must be followed, in order to remove an assignee, and the general power of the court to do so on any application has been impliedly taken away by the latter enactment, which would otherwise be unnecessary.

The court had formerly the power to adjourn the choice of assignees, even though all the creditors present had concurred in the election (*p*), and it seems this power is not interfered with by the Act of 1861; but the choice should not be adjourned for

CHAP. XV.

A creditors' assignee failing to observe the directions of the act, or it appearing to the court to be for the benefit of the estate, the court may remove creditors' assignee, &c.

Inconsistency of Acts of 1849 and 1861 as to mode of choosing assignees.

Court under each act has power to reject.

Powers of the court as to removal, inconsistent under the two acts.

Semble, the court's power of removal must be exercised according to the Act of 1861.

Court had and, *semble*, has power to adjourn choice of assignees.

(*o*) See remarks on *Ex parte Meiszner*, ante, p. 822.

(*p*) *Ex parte Garland*, 2 Rose, 361; 1 Mad. 318.

CHAP. XV.

Creditor who has proved, may vote in person or by attorney.

On separate adjudication, joint creditors may prove and vote in choice of assignees: but a separate creditor cannot, as against bankrupt firm.

A creditor on a voluntary bond may vote in choosing assignees.

Choice determined by majority of creditors voting.

A corporation votes by attorney specially appointed, or officer acting under general power.

Officer may vote by proxy.

Semble, one partner may, without a power of attorney, vote for himself and partners.

the mere purpose of allowing time to investigate a proof of debt tendered, where the amount, even if allowed, is not sufficient to turn the choice against the assignees already chosen (*q*).

Every *creditor* who has proved against the bankrupt or bankrupts, subject as hereinafter mentioned, may vote in the choice of assignees, but to give such vote he must be present in person or by attorney at the time of voting (*see post*, *Chapter on Practice*). It has before been shown, that though a joint creditor may prove against a bankrupt who has been made so separately, and vote in the choice of assignees (*r*), a separate creditor cannot prove against a bankrupt firm, for the purpose even of voting in the choice of assignees (*s*). Even a creditor on a voluntary bond, though he will be restrained from receiving dividends till other creditors are paid in full, may yet vote in the choice of assignees (*t*). But in order to determine the majority, it is not necessary that all the debts proved should be represented at the meeting, nor even that votes should be given in respect of those so represented, the majority in value of those creditors actually voting and entitled to vote will determine the choice of assignees, subject to the power of the court to reject the persons chosen (*u*).

A corporation can of course only vote by attorney (*v*), unless some officer is by the constitution of the corporation empowered for such purpose, who is then indeed attorney for the purpose, though empowered by a general and not a particular power; and it seems, if there be such an officer, he is impliedly authorized to substitute a proxy for himself by writing. At least it has been held, that the public officer of a joint stock bank might authorize an attorney to prove on behalf of the bank (*x*), and by analogy the manager of a somewhat similar bank in Scotland was held to have the like power (*y*). There may be some doubt whether one partner may, without a power of attorney from his co-partners, vote in the choice of assignees on the joint debt, but it would seem he can, as he may alone execute a power of attorney to an agent to vote on behalf of the firm, and *à fortiori* may therefore vote himself (*z*).

(*q*) *Re Woolley*, 1 Gl. & J. 366.

(*r*) *Ante*, p. 653 et seq.; *Ex parte Wyatt*, 2 D. & Ch. 211; see sect. 140 of the Act of 1849; see also *Ex parte Husband*, 5 Mad. 421.

(*s*) *Ante*, p. 653 et seq.; see *Ex parte Parr*, 1 Rose, 76; 18 Ves. 65, 70; *Ex parte Hamer*, 1 Rose, 321.

(*t*) *Ex parte Venables*, Mon. 494.

(*u*) *Cooke*, 286; see *Ex parte Butterfill*,

1 Rose, 192; *Ex parte Greignier*, 1 Atk. 91.

(*v*) *Ex parte The Bank of England*, 1 Sw. 10; 1 Wils. C. C. 295.

(*x*) *Ex parte Ackroyd*, 1 M., D. & D. 555.

(*y*) *Ex parte Manager of Western Bank of Scotland*, 30 L. T. 173.

(*z*) *Ex parte Mitchell*, 14 Ves. 597.

As in general every creditor who has proved is entitled to vote in the choice of assignees, any creditor is entitled to urge that the election has not been fairly conducted, and to have the assignee chosen, rejected, if he can show good grounds for such rejection. Thus he is entitled to have a new choice ordered, if the choice was fraudulently obtained (*z*), or if by surprise or mistake a great body of creditors, or creditors to a large amount, who would have voted differently (*a*), were excluded from voting (*b*), or if proofs were improperly admitted, and by such admission the choice was determined otherwise than it would have been if they had been excluded (*c*); and if it be shown that proofs have been wrongly excluded, which, if admitted, would have carried the election in favour of certain assignees, the court will set aside the choice, and, without even directing a new choice, will declare the assignees chosen by the virtual majority, duly elected (*d*).

Any creditor may apply for rejection of assignee, on sufficient grounds.

What are sufficient grounds.

Court, if proofs wrongly excluded, so as to turn the scale, will reject the assignee chosen and declare assignee chosen by virtual majority, elected.

Elections of assignees set aside for fraud. Instances.

In the following cases elections of assignees have been set aside as obtained by fraud. Where the fiat was sued out by the bankrupt himself, and all the creditors save the objecting party were represented by the solicitor of the bankrupt who sued out the fiat, the choice was set aside (*e*); and where, on a creditor's tendering a proof which would have turned the choice, the commissioners insisted upon the production of an unnecessary document, and refused to adjourn the choice for a reasonable time to enable the creditor to produce it, the proceeding being considered a stratagem of the solicitor to the fiat, to carry the choice of assignees, a new choice was directed (*f*). Where the solicitor of a bankrupt, made so on his own petition, held powers of attorney from friendly creditors to vote for assignees, and opposed on insufficient grounds, a proof which would have turned the choice, and carried the election by his powers of attorney, (another proof having also been omitted,) the choice was set aside, though matters had gone nearly to the declaration of a dividend (*g*).

But it is no ground for rejecting an assignee chosen, that there were creditors unprepared at the time to prove, who, if they had proved, would have determined the choice another way (*h*); nor

An assignee chosen, not rejected, because creditors

(*z*) *Ex parte Surtees*, 12 Ves. 10; *Ex parte Durent*, Buck, 201.

(*a*) See *Ex parte Smale*, 11 W. R. 47; 7 L. T., N. S. 376.

(*b*) *Ex parte De Chapeau Rouge*, M. & M'A. 174; *Ex parte Morris*, 1 Dea. 498; *Ex parte Edwards*, Buck, 411; see also *Ex parte Hawkins*, Buck, 520.

(*c*) *Ex parte Rawson*, 2 Gl. & J. 353; *Ex parte Danby*, Mon. 67.

(*d*) *Ex parte Stallard*, 2 M., D. & D. 469.

(*e*) *Ex parte Morse*, 11 Jur. 482; De G. 478; 16 L. J., Bcy, 9.

(*f*) *Ex parte Spiller*, 2 M., D. & D. 43.

(*g*) *Ex parte Carter, Re Robinson*, 3 De G. & J. 116.

(*h*) *Ex parte Butterfill*, 1 Rose, 192; *Ex parte Greignier*, 1 Atk. 91.

CHAP. XV.

unprepared to prove;
nor if proofs excluded,
unless fraudulently or so as to turn the scale.

Creditors may vote for assignees at any time before confirmation of appointment; but if no choice made at first meeting, and no adjournment there can be no subsequent choice.

A proxy to vote for assignees exhausted, where vote given, although first choice avoided.

The right to vote belongs to the creditor, in whose name proof stands.

But those only entitled to vote, who are entitled "of right" to prove.

Other persons not entitled to vote, unless order allowing

that some proofs have been improperly rejected (*i*), if it be not shown that they have been rejected fraudulently, or to such an extent as would have probably determined the choice differently.

Any creditor entitled to vote may, it seems, do so at any time after the first meeting or any adjournment thereof, before the choice is final, *i. e.* before the commissioner has confirmed the appointment (*k*); but it has been held, that if no creditors' assignee be chosen at the first meeting, and the meeting be not adjourned for the purpose, there can be no subsequent choice (*l*): this seems, however, a somewhat technical construction of the enactment.

It has been held, that a proxy to vote in the choice of assignees at the first or any adjourned or other meeting was exhausted when the vote was given, and though the first choice was avoided, the power could not be exercised on a second choice of assignees (*m*); but this also seems a somewhat technical decision, and probably might not be supported if the point should again arise. The authority under the Act of 1861 will ordinarily, it is presumed, be in the form given in Schedule 19 to the General Orders of October, 1861. (*See post, Practice.*)

The creditor in whose name the proof stands is the person to vote in respect of it, though he may have assigned all benefit under it; if the assignee desire to vote in person, he should apply to have the proof expunged, and a proof to the same amount entered in his own name (*n*).

A distinction exists, however, as to persons who have proved debts under a bankruptcy; some are entitled as of right to prove; and if any question has arisen, and an order, that they are so entitled, has been made, the order is only declaratory of a pre-existing right. In such a case the right to prove carries with it the right to vote: in other cases there is no *prima facie* right to prove, although proof may be allowed on application to the court, *e. g.*, in the case of an executor or trustee proving on behalf of the assets or of his *cestuis que trust* on his own bankruptcy, where the right to prove originates in the order of the court, and such order is not declaratory of a pre-existing right; here the order to prove does not, it seems, carry with it the right to vote, and no vote will be allowed in respect of such a proof, unless the order

(*i*) *Ex parte Durent*, Buck, 201; *Ex parte Thompson*, *lb.* note; *Ex parte Edwards*, *lb.* 411; *Ex parte Hawkins*, *lb.* 520; *Ex parte Milner*, 3 D. & Ch. 235.

(*k*) See *Ex parte Nash*, Mon. 501; 1

D. & Ch. 445.

(*l*) *Re Cannot*, 8 L. T., N. S. 291.

(*m*) *Re Hart*, Fonb., B. C. 57.

(*n*) *Ibid.*

CHAP. XV.

expressly allows a right to vote as well as a right to prove (o). It had indeed been said, before the case of *Ex parte Shaw*, that a bankrupt, if he were allowed to prove might, as of course, not only vote in the choice of assignees, but even choose himself as assignee and sign his own certificate, but any such doctrine must now be held to be exploded (p). So it has been held, that trustees proving against a co-trustee in respect of the trust fund are not properly creditors, and are therefore not entitled, without special order, to vote (q). A *cestui que trust*, tenant for life, allowed to prove on behalf of the trust on the bankruptcy of a fraudulent trustee, was held entitled to vote, and an order was made for the purpose (r).

An objection which might be fatal to a man's becoming himself assignee, may be no objection to his right to vote, *e. g.*, even if his interest be strongly opposed to that of the general body of creditors, he may still vote: so the fact of a creditor's having taken the whole of the bankrupt's property in execution levied under a warrant of attorney, may be an objection to such creditor's being an assignee, but not to his voting in the choice of assignees (s).

If the assignee chosen refuse the office, a new choice is of course (t); and formerly, if no one could be found to take the office, the bankruptcy would have been superseded (u); but this is not so now, the official assignee being now in such a case sufficient for the purposes of the law. There is in the Act of 1861 no direction that a creditors' assignee shall be chosen, though the creditors are empowered to choose one, unless it be thought that the 139th sect. of the Act of 1849 is still imperative, as to which *see ante*, pp. 821, 822. The non-appointment, however, of any creditors' assignee is expressly contemplated by the Act of 1861, sect. 129, which again goes to show that sect. 139 of the Act of 1849 is intended to be entirely repealed.

If more than one assignee be chosen, and one be rejected by the commissioner, there must be a new choice as to all (x). The 139th sect. of the Act of 1861 speaks of the creditors' assignee in the singular number, and this may raise a doubt whether the removal of one requires now a new choice of all; it is appre-

right to prove, allows right to vote.

Ex parte Shaw no longer law, *semble*.

Trustees, proving against co-trustee, not entitled to vote, without special leave; but a *cestui que trust*, proving for the trust, may vote without leave.

A person may vote who could not be chosen assignee.

Bankruptcy formerly superseded if no one accepted office of creditors' assignee;

official assignee now sufficient.

On rejection by commissioner of one of several assignees chosen, there must be a new choice as to all.

(o) *Ex parte Shaw*, 1 Gl. & J. 128, 163; *Ex parte Wyatt*, 2 D. & Ch. 211; see also *Ex parte Rowe*, De G. 111; 14 L. J., Bcy. 17.

(p) Case cited, Cooke, 4th ed. 498; Green, B. L. 260; also in *Ex parte Jackson*, 2 Rose, 221, which see, as also notes thereon; see *supra*, cases cited (o).

(q) *Ex parte Rowe*, *supra*.

(r) *Ex parte Cadwallader*, 31 L. J., Bcy. 66; 6 L. T., N. S. 485.

(s) *Ex parte Stallard*, 2 M., D. & D. 469.

(t) *Ex parte Cattaral*, 1 Dea. 193; *Ex parte Stephenson*, 3 M. & Ay. 663; S. C., *Ex parte Pearson*, 3 Dea. 304.

(u) 1 Christian, B. L. 252.

(x) *Ex parte Wilson*, 1 M., D. & D. 234; see *Ex parte Shaw*, 1 Gl. & J. 155; *Ex parte Steel*, 1 D. & Ch. 488; *Ex parte Rolls*, 3 M. & Ay. 702.

CHAP. XV.

hended, however, that the use of the definite article implies that the creditors' assignee means the person or persons who either separately or jointly holds or hold such office, and that the law as to the choice extending to all is not altered, as certainly the reason for that law remains unaltered.

The sections under which assignees once appointed may be removed are, as has been already stated, the 124th and 139th of the Act of 1861, and with these may be reckoned, if it be held not to be repealed, the 139th of the Act of 1849, also before mentioned. As, however, even if the older enactment has been repealed, the principal alteration made by the sections in question of the later act seems to regard only the mode of application to the court, and as on the application of two or more creditors the court may, if it thinks that it would be for the benefit of the estate, remove an assignee, the authorities on the general discretion of the court under the older may still guide it under the newer law.

Court of Appeal will not, except under special circumstances, interfere with commissioner's discretion to reject assignee.

If fraud practised in choice of an assignee, court will order his removal.

A sole surviving assignee should not retire till new choice made in place

The removal of assignees is a matter peculiarly within the discretion of the court, and the court of appeal will not interfere with the exercise of this discretion, unless in a case where it is clearly of opinion that that discretion has been wrongly exercised. So, where the court gave the assignees an election to remove solicitors whom they had appointed to the bankruptcy, and who were related to the bankrupt or themselves, or to retire, and the assignees having declined to do either, were removed, an appeal against this decision was dismissed with costs (*y*). If any fraud be practised in procuring a particular person to be chosen assignee, the court, upon application, will order him to be removed (*z*). Where money was lodged in the bank in the joint names of five assignees, one of whom was dead, and another had absconded, and the bank refused to pay it to the remaining three assignees without an affidavit that the two others were dead, the Lord Chancellor, on petition, without, so far as appears from the reports, making any order for the choice of new assignees, made an order that the money should be paid to the three assignees, intimating, at the same time, that he had no doubt of his authority to do so (*a*).

Where a sole surviving assignee is desirous to be removed, the course is to procure a new choice in the room of those who are dead, and then apply that he may be removed (*b*); the reason for which course is, that the title may be continued without a gap

(*y*) *Ex parte Bates*, 1 De G., M. & G. 452; 1 De G., M. & G., B. C. 52; see *Ex parte Candy*, M. & M'A. 197.

(*z*) *Vide supra*; and see *Ex parte Shaw*, 1 Gl. & J. 127.

(*a*) *Ex parte Collins*, 2 Cox, 427; *Ex parte Hunter*, 1 Merivale, 408.

(*b*) *Ex parte Rupp*, Mon. & B. 261; 1 Dea. & C. 461.

between the removal of a creditors' assignee and the appointment of a new one. It does not appear very clearly where the title to the estate would be in the interval, but it would seem that it would remain in the old assignees until vested by actual appointment in the new. Any misconduct of the assignee may be a sufficient ground for his removal, and most of the grounds given for the rejection before appointment may be grounds for removal, if not brought to the knowledge of the court until after the appointment, but it may be presumed that the court will be slower to remove an assignee once appointed than to reject one not yet chosen.

of deceased assignees.
 Reason for that course, to prevent break in title.
 Misconduct of assignee ground for non-appointment, ground also for removal.

So, under special circumstances already noticed (*supra*, p. 825), where the principal creditor or the great body of the creditors were excluded from the choice of assignees, the court ordered the assignees to be removed. A similar order was made for misconduct in the execution of their trust (*c*), or converting to their own use part of the bankrupt's property (*d*).

Instances.

So, where a creditor obtained the signature of the debtor to a declaration of insolvency, and afterwards received from him large parcels of wheat, and on the debtor becoming bankrupt was chosen assignee, he was removed on the application of dissentient creditors (*e*).

So, where the assignees, having been chosen at the instance of the bankrupt's solicitor, neglected to attend the sittings of the court, and allowed the bankrupt to carry on business as usual, they were removed at the instance of creditors, whose costs of the application were allowed out of the estate (*f*).

Even for purchasing any part of the bankrupt's property, or permitting a co-assignee to do so (*g*), or the like, the court, upon petition of any of the creditors, will order assignees to be removed; and where the assignee had been a party to an attempt to prove a fictitious debt, he was ordered to be removed, and to pay the costs of the application for his removal (*h*). Where the sole assignee was the managing clerk to a solicitor who had bought an estate belonging to the bankrupt and had neglected to complete the purchase, the court ordered his removal and a new choice (*i*); and where an assignee had sold his debt to another creditor, who was hostile to the fiat, he was removed and restrained from voting in the choice of the new assignees (*k*). So, if assignees are account-

An assignee purchasing bankrupt's property or allowing co-assignee to do so, removed.

(*c*) *Ex parte Halliday*, 7 Vin. Abr. 77.

(*d*) *Ex parte Townshend*, 15 Ves. 470.

(*e*) *Ex parte Dives, Re Basset*, 9 W. R. 237.

(*f*) *Re Beesley*, 11 W. R. 878.

(*g*) *Ex parte Reynolds*, 5 Ves. 707.

(*h*) *Ex parte Perryer*, 1 M., D. & D. 276.

(*i*) *Ex parte Ashmore*, 3 M., D. & D. 461.

(*k*) *Ex parte Stagg*, 2 M., D. & D. 186.

CHAP. XV.

Assignees,
accounting
parties, re-
moved, to have
accounts taken
against them.

Poverty alone
not a ground
for removal.

Sed quære,
if injury likely
to assets.

Residence out
of jurisdiction
formerly a
sufficient
ground.
Law under sect.
124 of Act of
1861 now
doubtful.

Suggested
course.

Under the Act
of 1849 bank-
rupt might
petition for

ing parties to the estate, they must be removed from the office of assignees, in order to have the accounts taken against them (*l*). So, also, assignees chosen by the interference of the bankrupt will be removed (*m*); and where at a meeting for the choice of assignees, under a fiat issued by the bankrupt himself, assignees were chosen by creditors who were all represented by the bankrupt's solicitor, the proof of another creditor having been postponed for want of evidence, but having been admitted subsequently to the choice, a new choice was ordered (*n*). Again, if the party chosen is insolvent, or has compounded with his creditors, he will be removed (*o*). Poverty alone is not a ground to remove an assignee; but in the case of a sole assignee, alleged to be in insolvent circumstances, and elected by suspicious votes, the court ordered the commissioner to appoint a co-assignee (*p*).

If the poverty be so abject as to induce the court to believe that it will be detrimental to the assets that the assignee should remain as such, the court, at the instance of two creditors, would now probably remove him. Residence out of the jurisdiction was a ground upon which the court, at the instance of any creditor, would formerly remove an assignee (*q*). At present the law is left in a somewhat uncertain state on this point by the 124th sect. of the Act of 1861; the residence of an assignee abroad for three months together is a ground for *any* creditor to move the court for the appointment of a new assignee, but nothing is said as to the removal of the old; it will, therefore, in any such case be the safer course for two creditors at least to join in an application to the court for the removal of the old and the appointment of a meeting to elect a new assignee, as there may be a doubt whether the appointment of a new is in itself a removal of the old assignee.

It has been said, that on a new adjudication against a bankrupt who has not obtained a certificate under a former bankruptcy, new assignees ought to be chosen (*r*).

We have already discussed at length the question whether any adjudication against an uncertificated bankrupt be not *ipso facto* invalid, and if it be so, the assignees under the former bankruptcy can evict the newly-chosen assignees.

Under the Act of 1849 a bankrupt might petition for the removal of an assignee, if he could show that the conduct of such

(*l*) *Ex parte Mendel*, 4 Dea. & C. 725.

(*m*) *Ex parte Molineux*, 3 Mon. & A. 703.

(*n*) *Ex parte Morse*, De G. 478; 11 Jur. 482.

(*o*) *Ex parte Surtees*, 12 Ves. 10.

(*p*) *Ex parte Copeland*, 1 Mon. & A. 308; 3 Dea. & C. 561.

(*q*) *Ex parte Grey*, 13 Ves. 274.

(*r*) *Re Dennis*, Fonb. 207.

CHAP. XV.

assignee was inconsistent with the due administration of the estate, but it had been held, before the date of the passing of that act, that a creditor, the proof of whose debt had been adjourned, could not take that step (*s*). It had previously to the last case been held that a creditor, who had not proved, might petition to remove an assignee, but he must have alleged himself to be a creditor, and must have sworn to his debt in his affidavit in support (*t*). Since the passing of the Act of 1861, however, it has been again held that to entitle a creditor to apply for the removal of an assignee he must have tendered a proof and had his proof admitted (*u*), and this after all seems the sounder rule, as a creditor, until proof, has no interest under the bankruptcy, and may proceed adversely to it. There is now much doubt whether the bankrupt himself is entitled to petition at all for the removal of assignees, he having, under the Act of 1861, no such power expressly: and there seems also to be some doubt as to whether an assignee can apply for his own removal or that of his colleague, but probably for such purposes at least, the power of the court under the Act of 1849 may be held still to exist, and it may be that the 139th sect. of that act is to this extent not repealed, though for most purposes superseded by the Act of 1861.

removal of assignee.

Creditor, whose proof adjourned, could not petition for removal of assignee.

Under Act of 1861, creditor cannot petition for removal unless his proof admitted.

As to whether an assignee can apply for his own removal or that of a colleague, *quære*.

Where one assignee petitioned to dismiss his co-assignee on the ground of misconduct, which, however, was denied, and the co-assignee recriminated, an inquiry was directed as to the circumstances of the case (*x*): again, where the petition was by the bankrupt, and it appeared that he was an instrument in the hands of the other assignee, and was acting in collusion with him, with a view of harassing the assignee who was favourable to the creditors, the petition was dismissed (*y*).

An inquiry has been directed as to misconduct.

An assignee might, under circumstances, be removed at his own request upon petition; but in such a case he had to pay all the costs attending it (*z*), as, for instance, when the object was to enable him to bid at a sale, the other assignees consenting to the petition (*a*). And where the creditor had executed a power of attorney, in the usual form, to vote in choice of assignees, and, contrary to his intention, he was elected sole assignee, he had to pay the costs of his removal (*b*); but if an assignee, being elected without his authority, decline to accept the office, the estate will

An assignee might formerly have been removed on his own petition, he paying the costs.

(*s*) *Ex parte Morse*, De G. 478; 11 Jur. 482; but see *Ex parte Rupp*, 1 D. & C. 461; Mon. & B. 261.

(*t*) *Ex parte Barnett*, 2 M., D. & D. 692.

(*u*) *Ex parte Meiszner*, 10 L. T., N. S. 354.

(*x*) *Ex parte Oulton*, 3 M., D. & D. 336.

(*y*) *Ex parte Oakes*, 2 M., D. & D. 60.

(*z*) *Ex parte Watts*, 1 Dea. & C. 322.

(*a*) *Ex parte Perkes*, 3 M., D. & D. 385.

(*b*) *Ex parte Hammond*, Mon. & C. 74.

CHAP. XV.

Removed assignee must allow new one to use his name upon an indemnity.

Assignee removed, not for default, entitled to costs from fund in hand.

Election of new creditors' assignee under sect. 125 of Act of 1861.

have to bear the costs of a petition for a new choice (c). And when he had been guilty of misconduct, but no charge was made against him by a cross petition, the discharge was without prejudice to any future application against him (c). An assignee, who had accepted office, but afterwards declined to act, was discharged under the 139th sect. of the Act of 1861, the costs being reserved (d). The removed assignee must consent to allow the new assignee to use his name in all actions in which it may be necessary to use it, upon an indemnity; he must consent to pay the costs of all proceedings commenced by him which the new assignee does not continue, unless the court shall consider that such costs were properly incurred (e). But an assignee removed for the convenience of the estate, as for infirmity or the like, will not be obliged to pay costs, as if removed for his own convenience (f). And if the assignee is removed for the benefit of the estate, and not on account of his own default, he is entitled to his costs out of a fund in hand before it is transferred to the new assignee (g).

By sect. 125 of the Act of 1861, it is provided that in all cases of the election of a new creditors' assignee the proceedings shall take place in the like manner as is hereinbefore provided in the case of the first election, and the new creditors' assignee shall have the same powers and perform the same duties as the creditors' assignee first chosen, and shall call to account such creditors' assignee, his heirs, executors, administrators or assigns, as the case may require.

By sect. 123 of the same Act, when the election of an assignee shall have been accepted by the person elected and confirmed by the court, the court shall, by certificate under the hand of the commissioner and the seal of the court (to be called the certificate of appointment), declare such creditors' assignee to have been duly elected, and appoint him to the said office accordingly. Such appointment shall be final, and shall not be subject to review or appeal, except as in the act provided.

It is the duty of the assignees to discover and realize the bankrupt's estate for the benefit of his creditors, but this latter duty is now thrown more especially on the creditors' assignee, to whom on his appointment the official assignee is bound to render an account and balance sheet of the bankrupt's estate, and of all receipts, payments and other transactions of such official assignee

(c) *Ex parte Pearson*, 3 Dea, 304; *S. C.*,
Ex parte Stephenson, 3 Mon. & A. 663.

(c) *Ex parte Angle*, 4 Dea. & C. 118.

(d) *Re Saph*, 13 W. R. 352.

(e) *Ex parte Thorley*, Buck, 231, 465;
3 Mad. 273.

(f) *Anon.*, 5 Mad. 76.

(g) See *Ex parte James*, Mon. & B. 262;
1 Dea. & C. 272.

in the matter of the bankruptcy, as well as a list of the creditors who have proved (*h*). CHAP. XV.

For the purpose of discovering and realizing the assets various powers are given to the court and the assignees, which are mentioned more particularly in the Chapter on the head of Discovery and Realization of the Assets. It is the duty of the assignees to exercise these powers where they are lodged in themselves, and to move the court to exercise them where they are vested in the court.

Among the specific powers which assignees ought themselves to exercise, and the specific duties cast on them by their office, with regard to the assets, are the following:—

They ought to register, enrol or record their appointment on the registry, whenever the bankrupt is entitled to lands in a place where a conveyance ought to be registered, enrolled or recorded (*i*):

They ought to decline property of the bankrupt, held on conditions, which render the property more onerous than profitable (*k*):

They ought to execute powers of the bankrupt which he might execute for his own benefit (*l*):

They ought, where it is for the benefit of the estate, to accelerate and perform the conditions annexed to a bankrupt's estate, so as to make the estate absolute, and thereby enable it to be realized at an improved value (*m*):

They are bound to perform the conditions of the bankrupt's tenure so long as they retain possession of his estate (*n*); and generally are bound to give effect to all liens, charges, incumbrances, rights and equities affecting any part of the assets, which the bankrupt would himself have been bound to give effect to. The last-mentioned class of duties are, however, duties regarding persons not claiming under the bankruptcy, and are already treated of in the Chapter on the Property passing by the Appointment of Assignees.

Under the Act of 1849 the custody of the bankrupt's estate was committed to the official assignee, a responsible officer of the court, and he was obliged to pay stock and monies into the Bank of England to the credit of the accountant in bankruptcy in the matter of the bankruptcy: sect. 39 of Act of 1849. This section has been repealed, and the custody as well as the title to the

Powers of the court and assignees for discovering and realizing assets.

Specific powers and duties of assignees.

Appointment of assignees to be registered, &c., if lands of bankrupt liable to be registered, &c.

Assignees bound to decline property of bankrupt if unprofitable;

to execute powers which he might execute for his own benefit;

to perform conditions where for benefit of the estate;

to give effect to all liens, charges, &c. affecting the assets.

Under Act of 1849, sect. 39, bankrupt's estate committed to the official assignee.

This section repealed.

(*h*) Sect. 118 of Act of 1861.

(*i*) Act of 1849, sect. 143, ante, Chapter on Discovery and Realization of Assets.

(*k*) Act of 1849, sect. 145, "Property

subject to Rent, &c."

(*l*) Sect. 147 of Act of 1849.

(*m*) Sect. 149 of Act of 1849, "Estates upon Condition."

(*n*) Sect. 144 of Act of 1849.

CHAP. XV.

property seems now transferred to the creditors' assignees alone, only leaving to the official assignee the duty of auditing the accounts of the creditors' assignees, and of circulating among the creditors printed copies of such accounts.

Under the Act of 1861, sect. 127, the creditors' assignee manages, &c. the estate;

and pays securities, &c. into Bank of England.

By sect. 127 of the Act of 1861, the creditors' assignee shall manage, and, except as in that act provided, realize and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, and he shall pay all monies not necessarily retained for current expenses, all exchequer bills, India bonds, and all other public securities, and all bills, notes and negotiable instruments belonging to the estate, forthwith upon receipt thereof, into the Bank of England, to the account of the accountant in bankruptcy, unless in the case of any adjudication in a country district there shall be no branch of the Bank of England in the locality, and then into such bank as the court shall direct, to the credit of an account to be opened in such bank by such assignee in his official character.

Exception as to debts under 10*l.* due to the bankrupt.

Assignee retaining monies over 50*l.* more than a week, chargeable with interest at 20*l.* per cent.

An exception before alluded to is made by sect. 128 as to debts owing to the bankrupt under 10*l.*, which there is no need here to repeat. By sect. 175 of the Act of 1861, if upon the examination of the accounts of the creditors' assignees, taken at the dividend meeting, it shall appear that the creditors' assignee has kept in his hands at any time during the space of one week more than the sum of fifty pounds belonging to the estate, the creditors may, upon establishing such fact to the satisfaction of the court, and if the assignee shall not show cause to the contrary, debit such assignee with interest for the amount so kept, at the rate not exceeding twenty pounds per centum by the year, for the time such monies were kept in his hands.

Former rules for payment into the bank of all monies in the hands of the creditors' assignees, and of sums over 500*l.* due to the bankrupt's estate from other persons.

By General Order of the 19th October, 1852, r. 134, the official assignee shall direct, in the form specified in the Schedule thereunto annexed (No. 2), the payment of all monies due to any bankrupt's estate from any one person, or from two or more persons being partners, and carrying on business or residing in England, and exceeding in amount the sum of 500*l.*, and of all monies being in the hands or under the control of any assignee or assignees chosen by the creditors of any bankrupt's estate to which such official assignee shall have been appointed, into the Bank of England, to the credit of the accountant in bankruptcy, and for the particular estate to which such money shall belong; and by rule 135, when any money shall be paid into the Bank of England, pursuant to the directions aforesaid, the person so paying such

money shall receive a certificate in the form specified in the Schedule thereunto annexed (No. 3) (o) from one of the cashiers of such bank, of his paying the same, and of its being placed to the account of the accountant in bankruptcy for the proper estate, and a voucher for such payment shall be sent by the bank on the same day to the said accountant; and by rule 136, as soon as conveniently may be after every such payment, the accountant in bankruptcy shall certify in writing to the proper official assignee that such payment has been made, and the name of the bankrupt or bankrupts to the credit of whose estate the money has been placed in the books kept in the office of the accountant in bankruptcy.

This must now in most cases be inapplicable to the official assignee, but a similar practice must now exist for the creditors' assignees, where not modified by the enactment just mentioned in the 127th sect. of the Act of 1861.

Besides this enactment, the Act of 1849 also provides, by sect. 265, that if any assignee shall retain in his hands or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ, any sum to the amount of more than one hundred pounds, part of the estate of any bankrupt, or shall neglect to invest any money in the purchase of exchequer bills when directed by the court, every such assignee shall be liable to be charged in his account with such sum as shall be equal to interest at the rate of twenty per centum per annum on all such money for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed, or during which he shall so have neglected to invest the same in the purchase of exchequer bills; and the court is thereby required to charge every such assignee in his account accordingly.

Where one only of two assignees retains funds in his hands, the other will not be liable to the 20*l.* per cent., unless he knowingly permitted the retainer; and it is only a culpable retainer that makes an assignee liable (p).

Where an official assignee had been removed from his office, and neglected to pay the sum of 200*l.* received by him into the Bank of England, he was ordered to pay the same, with 20*l.* per cent. for one year, the time he had retained the money, with the costs of the application (q).

But to give effect to these sections, the retainer must have been

Similar practice, now as to creditors' assignees, unless where modified by sect. 127 of Act of 1861.

Under sect. 265 of the Act of 1849, an assignee retaining, &c., or permitting a co-assignee to retain, &c., more than 100*l.* of the estate, liable to be charged with interest at 20*l.* per cent.

The retainer must have been a culpable retainer.

An official assignee retaining after his removal 200*l.* received by him, ordered to refund with 20*l.* per cent. interest.

(o) See Appendix, post.

Mon. & A. 272.

(p) *Ex parte Benham*, 1 Dea. 26; 2

(q) *Ex parte Turner*, 2 M., D. & D. 481.

CHAP. XV.

of that which formed part of the estate of the bankrupt strictly, and the retainer, after an order for dividend, of some of the dividends, will not render the assignee liable for 20*l.* per cent. interest, for the dividends have ceased to be the bankrupt's estate and have become the property of the individual creditors (*q*).

Assignee not excused, because money received by him from bankrupt not intended to be paid to him as assignee.

It is no excuse to an assignee to exempt him from this enactment that in fact the proceedings in the bankruptcy were allowed to sleep, and that money received by him from the bankrupt was not intended to be paid to him in respect of his position as assignee. Thus, a bankrupt had gone to America, and there prospered, and afterwards returned to this country: after his return he had paid to one of the assignees, who was a creditor, 254*l.* in respect of his debt due before the bankruptcy, and on his death his assets were sufficient, after payment of debts contracted after his return to England, to pay a dividend to the creditors under the original bankruptcy. It was argued, that the sum paid must be taken to have been paid to the assignee as a dividend only on his own debt, leaving an equal dividend due to the other creditors; but the court held, that the money was bankrupt's assets, and that the assignee could not appropriate it to himself, and charged him with 20*l.* per cent. on the sum retained (*r*). But it has been held, that these enactments do not apply in case an assignee becomes bankrupt, and that interest at 20*l.* per cent. cannot be against his estate (*s*), but the grounds are not stated, and it is rather difficult to understand why this should be so, for if the application had been made before the bankruptcy of the assignee, there is no doubt the 20*l.* would have been chargeable, and if it had been charged, and then the assignee became bankrupt before it was paid, it would, it seems, still be proveable as a debt under his bankruptcy; it is not easy to see why the laches of the co-assignees, or of the commissioner in not requiring the defaulting assignee to make good his default until he becomes bankrupt, is to discharge him of the liability imposed on him by statute, unless indeed the 20*l.* per cent. penalty is to be considered in the light of damages in tort, which would not be proveable as such.

In an action under these sections against assignees for recovery of the 20*l.* per cent. penalty, the plaintiff must declare specially as for a penalty, unless the commissioner has settled an account charging the assignees with such interest (*t*).

(*q*) *Wackerbath v. Powell*, 2 Gl. & J. 151; Buck, 495.

(*r*) *Re Elswood*, 26 L. T. 96.

(*s*) *Ex parte Goldsmith*, 1 Gl. & J. 405.

(*t*) *Beresford v. Birch*, 1 Car. & P. 373.

CHAP. XV.

By sect. 129 of the Act of 1861, the creditors' assignee shall, at the end of three months from and after his appointment, and thenceforth at the expiration of every succeeding three months, render to the official assignee, in the presence of the registrar, a debtor and creditor account of all sums received and paid on account of the bankrupt or his estate, verified on oath as a full, true and faithful account of his receipts and payments as such creditors' assignee; and the vouchers for such account, and all books of account in his possession or power, together with his banker's pass book, shall be produced by him to the official assignee, who shall examine the same, and if he shall be dissatisfied with such account, the same, or any part thereof, or any matter arising thereon, shall be inquired into and considered by the registrar, in the presence of the official and creditors' assignee; and if no creditors' assignee be appointed, the official assignee shall in like manner render the account herein required to the registrar, who shall examine the same: provided that in the case of county court registrars, their accounts, as official assignees, shall be in like manner rendered to and examined and passed by the judges of their respective courts.

Every three months the creditors' assignee bound, under sect. 129 of Act of 1861, to pass account with official assignee;

if no creditors' assignee, official assignee bound to account with the registrar, and county court registrars with the judges of their courts.

The omission to render these accounts at the time specified in the act, is a good ground for removal of an assignee so omitting to account (u).

Omission to account ground for removal of assignee.

By sect. 130 of the same act, forthwith after the passing of each such account of the creditors' assignee, a copy thereof, or a statement showing the nature and result of the transactions and accounts of the assignee, shall be made out by the official assignee, and sent by him in a printed form through the general post to every creditor who has proved under the bankruptcy.

Official assignee, under sect. 130, to send to each creditor a printed form of the account.

By the 122nd sect. of the same act the creditors' assignee may be required to give security; but it may be observed, that no power is given to the majority to fix the security, &c., to be given, except at the meeting for choice of creditors' assignees.

By sect. 122, the creditors' assignee may be required to give security.

By sect. 132 of the Act of 1849 before referred to, as not having been expressly repealed, the court may order treasurers or other officers, bankers, attornies or other agents of the bankrupt, to pay and deliver over to the *official* assignee, or to the Bank of England to the credit of the accountant in bankruptcy, monies or securities in their custody, possession or power, as such officers or agents, and which they are not entitled to retain as against the bankrupt or his assignees.

By sect. 132 of the Act of 1849, treasurers, bankers, &c. to pay monies to the official assignee (*sed quære*, impliedly repealed).

(u) *Ex parte Rawlings*, 12 W. R. 3; 9 Jur., N. S. 1183; 9 L. T., N. S. 275.

CHAP. XV.

Court armed with large powers to summon and examine for purposes of discovery.

By sect. 124 of the Act of 1849, all post letters of the bankrupt to be re-addressed by postmaster to official or other assignee, if court makes an order to that effect.

Under the Act of 1849, sect. 105, official assignee may require delivery on oath of all bankrupt's books and papers.

By sect. 120 of Act of 1861, court to give directions as to custody of books, &c. of the bankrupt.

Bankrupt, arranging debtor, or creditor, allowed (under sect. 232 of the Act

For the purpose of discovery the court is, by sect. 120 of the Act of 1849, armed with large powers, and it is the duty of the assignees in a proper case to move the court to the exercise of such powers, *e. g.*, those of summoning and examining persons supposed to be indebted to the bankrupt's estate, or to possess property belonging to such estate.

By 12 & 13 Vict. c. 106, s. 124, the court may order that for a period of three months from the date of any such order all post letters directed or addressed to any bankrupt, at the place of which he shall be described in the petition for adjudication of bankruptcy, shall be re-directed, re-addressed, sent or delivered by the postmaster-general, or the officers acting under him, to the official or other assignee or other person named in such order; and upon notice by transmission of a duplicate of any such order to the postmaster-general or the officers acting under him, by the official or other assignee or other person named in such order, of the making of such order, it shall be lawful for the postmaster-general or other such officers as aforesaid, in England, Scotland or Ireland, to re-address, re-direct, send or deliver all such post letters to the official or other assignee or other person named in such order accordingly; and the court may, upon any application to be made for that purpose, renew any such order for a like or for any other less period as often as may be necessary. (*See ante, Discovery, Realization and Protection of Assets.*)

By sect. 105 of the Act of 1849, the official assignee may immediately after the advertisement of the bankruptcy or on the bankrupt's surrender and consent to advertisement require the bankrupt to deliver up to him on oath, to be taken as in the section is mentioned, all his books and papers relating to his estate and to discover all which may not be in his own power, and the bankrupt must, if required, attend the assignees to settle the accounts of his estate, or to give evidence when wanted; for which the official assignee is to pay him 5s. a day out of his estate.

By sect. 120 of the Act of 1861 before noticed (*see Discovery, Realization and Protection of Assets*), the court is empowered to give directions as to the custody of the books, papers and writings of the bankrupt, and to authorize the official assignee to have the custody thereof. The apparent discrepancy of this clause with the corresponding clause in the former act has already been discussed.

By sect. 232 of the Act of 1849, the court shall order the official assignee to permit any bankrupt, or arranging debtor, or any creditor of such bankrupt having proved his debt or of any such arranging debtor, when the debt of such creditor has been

CHAP. XV.

admitted in the petition for arrangement or proved, or the attorney of any such bankrupt debtor or creditor to have inspection at all reasonable times of all books, papers, writings, relating to the fiat, petition or adjudication, and the estate of the bankrupt or debtor in the possession of the assignees, and permit him to inspect and examine the same, and the official assignee shall provide for any such bankrupt debtor, creditor or attorney requiring the same, an office copy of such books, papers and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum or rate of charge as may be authorized in that behalf. But it has been held, that this section does not entitle a creditor to call for inspection of the proceedings for the purpose of enabling him to impeach the validity of the adjudication (*x*), nor is it the practice under this section to allow a bankrupt, before the adjudication is advertised, to inspect the proceedings, until he has actually given notice of his intention to dispute the adjudication (*y*).

of 1849) to inspect books, &c.

But creditor held not to be allowed inspection for purpose of impeaching fiat; nor is bankrupt admitted to inspect, before advertisement, unless on giving notice of intention to dispute fiat.

Principle of the decision in *Ex parte Rimell* open to doubt.

Where a debtor refused to be sworn, when summoned under sect. 187 of the Act of 1861, except on condition of the creditor first executing a deed under sect. 192, he was committed.

A copy of proceedings granted, omitting parts prejudicial to third parties.

A person named as a creditor in the bankrupt's statement allowed a copy without proving.

It does not seem easy on principle to maintain the position taken in the case, *Ex parte Rimell*, above mentioned, for if the creditor has proved, the statute is imperative that he is entitled to inspection, and the court has no right, it would seem, to examine his secret soul as to his object in making the inspection.

In a case in which a creditor summoned a debtor for examination under the 197th sect. of the Act of 1861, with the view of showing that a deed was bad under the 192nd sect. of the same act, and the debtor refused to be sworn, unless the creditor would first execute the deed, whereupon the commissioner committed the recusant debtor, the Chancellor on appeal affirmed the order of the commissioner (*z*), overruling many previous orders of the London commissioners.

On the application of creditors and the bankrupt for a copy of proceedings, although the assignees resisted, the court granted it, omitting however such parts as might be prejudicial to third parties (*a*).

In general only creditors who have proved are entitled to see any of the proceedings, but a person, named as a creditor in the bankrupt's statement, furnished under the 93rd sect. of the Act of 1861 was allowed a copy of the statement, though he had not proved (*b*).

(*x*) *Ex parte Rimell*, 1 De G., M. & G. 491; see *Ex parte Munk*, 3 D. & Ch. 233.

(*y*) *Re An alleged Bankrupt*, 32 L. T. 303.

(*z*) *Ex parte Brooks*, 12 W. R. 924.

(*a*) *Re Dales*, 12 W. R. 177.

(*b*) *Ex parte Jarrett*, 10 L. T., N. S. 105.

CHAP. XV.

Official and creditors' assignees audit each other's accounts mutually.

Official assignee, at first meeting, to give information as to bankrupt's estate, &c.; and to assist the bankrupt in preparing statement, and to file with it his own report.

Assignees, under the Act of 1849, bound to act under direction of the court, and will be indemnified.

Now, under Act of 1861, bound to act as directed by creditors' resolutions.

Under sect. 136 of the Act of 1861, in case of disputes between assignees inter se, or with creditors, &c., the parties may apply to court having jurisdiction, or to London court;

but court in its decision to

It is also the duty of the assignees to audit each other's accounts, *i. e.*, of the creditors' assignees to audit the accounts of the official assignee (*z*), and of the official assignee to audit the accounts of the creditors' assignees (*a*).

It is the duty of the official assignee to attend at the first meeting of creditors, and give all the information he can as to the estate and effects and liabilities of the bankrupt (*b*).

It is the duty of the official assignee to assist the bankrupt in preparing a statement of his accounts and to file with the bankrupt's statement a report on the state of his affairs (*c*), and the official assignee is entitled to no allowance for rendering any such assistance, no matter how complicated the accounts may be, his salary being his remuneration, and as he is the proper person to examine the accounts, he is not the person to prepare them (*d*).

The official assignee's specific duties as an officer of the court are treated of in the Chapter on the Court and its Officers.

The assignees are in general bound to act in the discharge of their office under the direction of the court, and will be indemnified in so acting, and this was the law under the Act of 1849 (*e*). They are further by the Act of 1861, it would seem, bound to act in conformity with the resolutions of the creditors passed in meeting, so far as such resolutions are not held by the court to be unjust and unfit to be enforced. By sect. 136 of the Act of 1861, in case of any claim, dispute or difference between the official assignee, the creditors' assignee, and the creditors, or any of such persons, or between any persons claiming under a trust deed, deed of composition or arrangement, relating to any bankrupt's or debtor's estate, or to any money or property claimed as part of the estate of any bankrupt or debtor, either party may apply to the court having jurisdiction in the bankruptcy, and in other cases to the court in London; and it shall be lawful for the court to determine the same, and to summon and examine upon oath the official or creditors' assignee, trustee, or any other person whomsoever, as to any matters and things concerning the bankruptcy or trust estate, and to direct such inquiries, and to give such directions, and make such orders relative thereto, as shall to the court seem just and expedient, and to award costs, personally or in any other manner, against the official or creditors' assignee, trustee or any other person; provided that in all cases in which a resolution has

(*z*) Sect. 119 of Act of 1861.

(*a*) Sect. 129 of Act of 1861, before mentioned.

(*b*) Sect. 109 of Act of 1861.

(*c*) Sect. 143 of Act of 1861.

(*d*) *Ex parte Russell*, 5 De G., M. & G. 373; 18 Jur. 411.

(*e*) Sects. 151, 153 of Act of 1849.

been come to by a majority in number and value of the creditors assembled in a meeting, regard shall be had by the court to such resolution, and the same shall not be varied or set aside by the court, unless such resolution shall, in the opinion of the court, be unjust or inequitable, and not fit to be binding and conclusive under this act.

CHAP. XV.

have regard to wishes of majority of creditors in meeting.

By sect. 147 of the Act of 1861, the official or creditors' assignee, as the case may be, shall examine all the statements of account aforesaid, and compare the same with the books, accounts, and other documents of the bankrupt, and shall from time to time make out a list of the creditors who have proved their debts, stating the amount and nature of such debts, which list shall be open to the inspection of any creditor who has proved under the estate.

The bankrupt's statement of account to be examined with his books, &c., and list of creditors to be made out by the assignee.

It is also the duty of the creditors' assignees to submit to the creditors a statement of accounts at the dividend meetings, and it is the duty of the official assignee to check and verify such account (*f*), and to prepare the dividend list and send the warrants to the proving creditors (*g*). The latter is liable, it would seem, for any error in such preparation, so that a creditor entitled, who had been omitted in the distribution of the fund, would be entitled to recover against the official assignee (*h*).

Creditors' assignee to submit statement of accounts to creditors at dividend meetings.

Official assignee is bound to check the accounts, and is liable for errors in dividend list.

It was held under the former law that the office of official assignee in the payment of dividend was ministerial only, and that, therefore, where a creditor received the usual circular for the payment of his dividend, the official assignee could not resist the payment (*i*); it is apprehended that the like must now be the law as to the creditors' assignee.

Office of official assignee in the payment of dividend ministerial only formerly.

Like now as to creditors' assignee.

It may become the duty of the creditors' assignees or of the official assignee to prosecute the bankrupt for a misdemeanor (*k*), and it is generally the duty of the creditors' assignee to sue for penalties incurred by any person for breach of the provisions of the bankrupt's acts in respect of the estate which such assignee represents (*l*).

Duty of the creditors' assignee or official assignee to prosecute for breach of bankrupt acts, &c.

Though the assignees are to act under the general direction of the court (*m*), they are not bound to apply to the court in every case; thus, the creditors' assignees may sell the property of the bankrupt by private contract, and the court will not, except on a case of *mala fides* being made and supported by fair evidence, in-

Assignees not bound to apply to the court in every case of doubt.

(*f*) Sect. 174 of Act of 1861.

(*g*) Sect. 178 of Act of 1861.

(*h*) *Ex parte Hall*, De G. 555; 11 Jur. 639.

(*i*) *Ex parte Alexander*, Mon. 503; 1

D. & Ch. 513.

(*k*) Sect. 223 of Act of 1861.

(*l*) See sect. 227 of Act of 1861.

(*m*) Sect. 151 of Act of 1849.

CHAP. XV.

Inquiries directed by the court.

Instances.

terfere with their discretion (*n*) in each sale, nor in the compromise of a debt or claim upon the bankrupt's estate (*o*); but it is in general more prudent for the assignees to obtain the sanction of the court, and whenever there is a fair doubt in the minds of the assignees how to act in a case of difficulty, the court will ascertain and determine what course will be for the benefit of the creditors; and when an inquiry is necessary, will refer it to a private sitting for the purpose; thus a reference has been made to inquire if it would be beneficial for the estate that the assignees should accept an offer made them to purchase part of the bankrupt's property (*p*); or to carry into execution a contract entered into by the bankrupt for sale of the timber upon his estate (*q*); or a contract entered into by the assignees for sale of part of the bankrupt's estate (*r*); or to carry on the bankrupt's business (*s*); or to reduce the rent of premises let by the assignees (*t*); or to enter into a proposed arrangement with certain creditors (*u*); or to conclude an arrangement entered into by the assignees for settling claims upon the estate and the mode of payment of the creditors, such arrangement having been assented to by all the creditors, save one, who did not oppose (*x*); or a compromise with parties as to their right to property claimed by the assignees (*y*); and after a compromise, between the litigating parties and the assignees, had been sanctioned by a meeting of the creditors, it was confirmed by the court (*z*), and there will be such a reference, where one of the assignees declines to give or refuses his concurrence in an arrangement touching the estate, agreed to by a meeting of the creditors (*a*).

But the court will not decide questions of law for the assignees, where the opposing parties are not present.

But the court will not, in general, on the mere application of the assignees decide a question of law for them where the opposing parties are not before the court, as in such cases the assignees ought to be guided by their own discretion and their own legal advisers (*b*).

So, where the bankrupt was party to a suit in Chancery, and the Master had reported that it would be for the benefit of the

(*n*) *Ex parte Dunman*, 2 Rose, 66; *Ex parte Ford*, 5 De G., M. & G. 390; *Ex parte Hurly*, 2 D. & Ch. 631; *Ex parte Belcher*, 4 D. & Ch. 1; 1 M. & Ay. 478.

(*o*) *Ex parte James*, 3 D. & Ch. 290.

(*p*) *Ex parte Goding*, Mon. & B. 263; 1 Dea. & C. 323.

(*q*) *Ex parte Jeffery*, 1 Dea. & C. 206.

(*r*) *Ex parte Bradstock*, 1 Dea. 272; 2 Mon. & A. 490; *Ex parte Kirby*, 4 Dea. & C. 400; 2 Mon. & A. 142; *Ex parte Trimmer*, 3 Mon. & A. 245.

(*s*) *Ex parte Mendel*, 4 Dea. & C. 725.

(*t*) *Ex parte De Begnis*, 4 Dea. & C.

225; 1 Mon. & A. 277.

(*u*) *Ex parte Kirby*, 2 Mon. & A. 142.

(*x*) *Ex parte Hyslop*, 4 Dea. & C. 809; 2 Mon. & A. 289.

(*y*) *Ex parte Ballard*, 3 Mon. & A. 29; *Ex parte Bousfield*, 3 Mon. & A. 41.

(*z*) *Ex parte Arran*, 1 My. & C. 509; 3 Mon. & A. 42; *Ex parte Jerrard*, 3 Dea. 1; 3 Mon. & A. 358; *Ex parte Hare*, 3 Mon. & A. 43.

(*a*) *Ex parte Taylor*, 2 Dea. 399; 3 Mon. & A. 222.

(*b*) *Ex parte James*, *supra*.

creditors that the suit should be compromised, the Court of Review refused to order the compromise to be entered into, but directed the order in Chancery to be registered in the Court of Bankruptcy (c). Where, however, at a meeting duly convened, the major part of the creditors in number and value agreed to a compromise of litigation with the bankrupt, upon the terms that he should submit to the commission upon payment of a certain sum out of his estate, the Lord Chancellor had jurisdiction to sanction the arrangement, and to order the assignees to pay a part of the sum to the bankrupt (d).

An order made *ex parte* on the application of the assignees, sanctioning an arrangement with regard to the estate or debts of the bankrupt, will not bind any creditor or other person not a party to the order, who may still proceed against the assignees and have the arrangement set aside (e); but the assignees would in such a case, if they had been guilty of no *mala fides*, suppression of evidence, or the like, be entitled to indemnity out of the assets of the bankrupt, so far as they would go.

If the assignees make any contract, on behalf of the creditors, with any of them, or with the bankrupt or a stranger, with regard to the assets, the court, unless it shall think it for the benefit of the creditors, will not enforce it, unless compelled to do so, as, under certain circumstances, it would be by statute. The assignees would, however, be liable to an action on the contract at law, and in many cases would not be entitled to any indemnity out of the bankrupt's assets (f). If, however, they had acted entirely *bonâ fide*, and with due care and diligence, and had only been led astray by a venial error of judgment, the court might perhaps hold the assets bound to indemnify them from the consequences of the action (g). Whether it ought to do so is perhaps open to doubt, for it seems that the only jurisdiction which the court has in dealing with the assets so as to indemnify the assignees upon a contract with a stranger, is, that it holds them, for the purposes of the contract, as the agent of the parties interested in the assets. That it certainly does, so far as it is within the power of the assignees, as such, to make any such contract, but if it be not within their

An *ex parte* order for an arrangement as to the bankrupt's estate or debts, will not bind a person not a party to it.

But assignees in certain cases entitled to an indemnity out of the assets.

The court will not enforce all contracts made by the assignees, they must be for the benefit of the creditors.

The assignees may be sued at law on the contract, and cannot in all cases claim an indemnity.

The court may, in its discretion, direct them in such cases to be indemnified; *sed quære*.

(c) *Re Williams, Ex parte Weinholt*, 4 Dea. & C. 111; 1 Mon. & A. 689.

(d) *Ex parte Jerrard*, 3 Dea. 1; 3 Mon. & A. 358; *Ex parte Arran*, 1 My. & C. 509.

(e) *Ex parte De Begnis*, 4 D. & Ch. 225; 1 M. & Ay. 277; see *Ex parte James*,

3 D. & Ch. 290.

(f) *Ex parte Nainby*, 3 Dea. 587; *Staines v. Wainwright*, 6 Bing., N. C. 174.

(g) See *Ex parte Prater*, 4 D. & Ch. 214; 2 M. & Ay. 364.

CHAP. XV.

Suggestion as to the proper limits of the court's discretion.

Assignees to have power, under sect. 153 of the Act of 1849, with the leave of the court, to begin, prosecute, &c. actions and suits ;

to compound debts, &c.

The court, before giving leave to sue, &c., must be satisfied that success is probable.

Assignees to be repaid all reasonable expenses out of the bankrupt's estate.

powers, then there is in fact no agency. If it be within the power of the assignees, then the contract, though made through the agents, is the contract of the principals, and if so, it ought to be actually confirmed and carried out by the order of the court, but in the other case supposed where there is in fact no agency, why should the assets be diminished by the wrong doing of the assignees? The correct course would perhaps be, that the court should not affirm the implied agency further than in justice to the person who thought he was acting for the best, it is bound to do, leaving to the other contracting party his rights *strictissimi juris*, i. e., his remedy by action for damages, but not assisting him by intervening with its equitable powers in his behalf.

By sect. 153 of the Act of 1849, the assignees, with the leave of the court first obtained, may upon application to such court, but not otherwise, commence, prosecute or defend any action at law or suit in equity which the bankrupt might have commenced, prosecuted or defended, and in such case the costs to which they may be put in respect of such suit or action, shall be allowed out of the proceeds of the estate and effects of the bankrupt; and with like leave of the court, after notice to such creditors, and subject to such condition (if any) as to obtaining the consent of creditors, or any proportion of them, as the court shall think fit to direct, the assignees may take such reasonable part of any debts due to the bankrupt's estate as may by composition be gotten, or may give time or take security for the payment of such debts, and may submit to arbitration any difference or dispute between the assignees and any other person for or on account or by reason of any thing relating to the estate and effects of the bankrupt. Even before the Act of 1849, if the assignees carried on a suit without having obtained first the sanction of the court, it was held that the bankrupt's estate should not be made liable for the costs (*h*). The court will not, under sect. 153 of the Act of 1849, give leave to assignees to sue, &c., without being satisfied that there is reasonable probability of success; nor will it entertain an application by a creditor seeking to impose conditions on the mode of suing, &c., until the assignees have first applied under the section in question for leave to sue, &c. (*i*).

But for all reasonable expenses incurred by them in the exercise of their functions as assignees, they will be repaid out of the bankrupt's estate. Even costs incurred by them in defending the fiat

(*h*) *Ex parte Whitechurch*, 1 Atk. 209.

(*i*) *Ex parte Walmsley*, 13 L. T., N. S. 24; 14 W. R. 16.

or adjudication will be allowed them, as between attorney and client, out of the estate (*j*).

But an official assignee, who only appears to consent to an application made by a creditor, will not be allowed his costs (*k*).

Cases in which assignees not allowed costs.

And where the commissioner had miscarried in matter of account through the default of the official assignee, the latter was refused his costs on the appeal (*l*).

So, where assignees did not oppose the bankrupt at the passing of the last examination, but left it to certain creditors to do so, who substantiated their charges against the bankrupt, the assignees were not allowed their costs of appearance (*m*).

If it appear that the assignees have acted for the benefit of the assets, then, though they have expended their own money they will be entitled to be repaid it, as having advanced it as agents for the parties interested; thus, where the surviving assignee paid the sum of 50*l.*, to induce a claimant to discontinue an action under circumstances advantageous to the estate, the court sanctioned the arrangement by ordering the repayment to the assignee, of the sum in question as forming a proper item of disbursement in his accounts (*n*). And where the bankrupt was entitled, as tenant for life in remainder, to certain settled estates, and by the settlement it was provided that the person who should be entitled to the use and occupancy of the mansion-house should reside and dwell therein, and use the name and arms of G. upon pain of forfeiting all benefit under the settlement; and after the bankrupt obtained his certificate, the estate for life fell into possession; the court gave its sanction to an agreement between the assignees and the bankrupt, giving him a reasonable allowance to fulfil the conditions of the settlement (*o*).

But assignees spending their own money for the benefit of the estate, will be repaid it.

Arrangements between the assignees and bankrupt, if beneficial, sanctioned.

So, an assignee, sustaining a litigated fiat, is entitled to his costs, as between attorney and client, out of the estate (*p*); should he be successful, the fiat is always presumed to be for the benefit of the creditors; should he, however, be unsuccessful, there are no assets under the control of the court, out of which payment can be ordered (*q*).

By stat. 12 & 13 Vict. c. 106, s. 150, in every case the assignees

The assignees,

(*j*) *Ex parte Bryant*, 2 Rose, 1.

Mon. & C. 75.

(*k*) *Re Thorneycroft and Griffiths*, 32 L. J., Bcy. 48.

(*p*) *Ex parte Bryant*, 2 Rose, 1.

(*l*) *Ex parte Graham, re Grant*, 12 W. R. 1; 9 L. T., N. S. 278.

(*q*) *Ex parte Paul*, Mon. & M'A. 185;

(*m*) *Ex parte Brook*, 8 L. T., N. S. 375.

Ex parte Hartop, 9 Ves. 109; 12 Ves.

(*n*) *Ex parte Prater*, 4 Dea. & C. 214; 2 Mon. & A. 364.

349; and see *Ex parte Vaughan*, 14 Ves.

(*o*) *Ex parte Goldney*, 3 Dea. 570;

513; *Ex parte Coates*, 3 Dea. & C. 626;

1 Mon. & A. 328; and see *Plumstead*

Water Works Co., *Ex parte Hardinge*, 1

N.R. 40.

CHAP. XV.

with the sanction of the court, may appoint the bankrupt to manage the estate, carry on the trade, &c.;

but any creditor may object to the carrying on of the trade; *sed quære*, as to effect of sect. 136 of the Act of 1861.

may, with the approbation of the court, appoint the bankrupt himself to superintend the management of the estate, or to carry on the trade for behoof of the creditors, and to aid them in all or any other respects they may think fit, in administering the bankrupt's estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate. A similar discretion was given to the assignees by stat. 1 & 2 Will. 4, c. 56, s. 35. Any creditor can, however, object to the carrying on of the trade, by insisting upon an immediate sale of the stock (*r*): and this was so under the old law, even though the assignees might fairly be of opinion that deferring the sale, or keeping the property instead of selling it, would be more advantageous for the creditors (*s*), and even though it had been determined to carry on the business by a majority of creditors present at a meeting duly convened for the purpose (*t*). The proviso before noticed in the 136th sect. of the Act of 1861, binding the court not to vary or set aside the resolution of a majority in number and value of the creditors, unless it be unjust and inequitable, might probably determine the last-mentioned case otherwise under that act. In a case which occurred under the Act of 1849, the creditors' assignees and some of the creditors having given fresh credit to an uncertificated bankrupt, and induced him to carry on trade, a warrant, on the application of another creditor who did not mention this arrangement, was granted by the court for the seizure of the goods in the bankrupt's possession, and it refused to withdraw the seizure, except on the terms of security being given for the amount of the goods, to abide the claims of all parties, in which case they were to be returned to the bankrupt, otherwise they were to be sold (*u*).

Formerly creditors could not prevent assignees from selling.

But formerly creditors could not prevent assignees from selling, although they might be proceeding to a sale in a manner apparently objectionable, and open to suspicion; for the assignees acted at their own risk and upon their own responsibility, and they, and not the court, were the judges of the propriety and expediency of the sale (*x*).

Property of an onerous character may be disclaimed by

If assignees consider any property of the bankrupt to be of an onerous possession they may disclaim it, and may refuse to continue to carry on a trade or to work a mine, &c. (*y*), except

(*r*) *Ex parte Hall*, 2 Dea. 263; 3 Mon. & A. 169.

(*s*) *Ex parte Goreing*, Cooke, 289; see *Ex parte Hughes*, 6 Ves. 622; *Ex parte Hall*, supra; *Ex parte Miller*, 1 M., D. & D. 39.

(*t*) *Ex parte Miller*, supra.

(*u*) *Re Hughes*, 34 L. T. 22.

(*x*) *Ex parte Montgomery*, 1 Glyn & J. 338.

(*y*) *Ex parte Badcock*, M. & M'A. 231; see also "Property subject to Rent, &c.," ante, p. 833, n. (*k*).

CHAP. XV.

so far as under the above-mentioned sect. 136 of the Act of 1861, they may now be bound by the resolution of the creditors. Formerly if a creditor objected to the course the assignees were taking, he might have proposed a sale and offered a price or procured a purchaser of the property, and on payment of the purchase-money the court would have ordered the assignees to convey and would have forbidden them to disclaim: but it would hardly under any circumstances, it is submitted, have ordered them to carry on the business or to work the mines against their own consent.

assignees, *sed quære*, this discretion is to be exercised under control of the creditors by sect. 136 of the Act of 1861.

So, it has been held that the court will not, at the instance of the bankrupt, restrain the assignees from selling, on the ground of a promise of, composition to a greater amount than the goods would realize on a sale, unless security be given that such a composition will be paid (*z*); and the court will not interfere to postpone a sale of the bankrupt's effects, on the ground that the bankrupt has presented his petition to annul for want of the requisites, without being satisfied, from an inspection of the proceedings, that the adjudication cannot be supported (*a*). In a case of suspicion the court will direct an inquiry as to the conduct of an assignee, in the sale of a specific part of the estate, and as to his diligence in endeavouring to recover certain debts (*b*).

Court will not stop a sale, unless a promise of a composition is supported by sufficient security.

Inquiries directed as to the conduct of assignees, in selling or realizing assets.

It follows, from the position of the assignees with regard to the assets, that they cannot purchase the assets, or any part of them by private contract (*c*), nor even bid at an auction without leave of the court, which will only be granted on terms; as to which, see *Practice on Sales of the Bankrupt's Assets*.

Assignees cannot purchase assets by private contract, or at auction, without leave.

The assignees formerly, and now with the exception before mentioned as to debts under 10*l*. the creditors' assignees, are the proper persons to institute all suits or actions which may be proper for the recovery of any property of the bankrupt, and to defend all suits or actions by which it may be sought to diminish or injuriously to affect the property of the bankrupt. This change in the law may render unimportant questions which sometimes used to arise where there was a difference of opinion between the creditors' assignees and the official assignee, as to the advisability or mode of taking proceedings. Thus the court refused to interfere to compel an official assignee to join the other assignees as a plaintiff in a suit, as the object of the suit may be attained by his being made

Creditors' assignees now bring actions, &c. for bankrupt's property, except debts under 10*l*.; and defend actions, &c. as to bankrupt's property.

(*z*) *Re Walsh*, 9 Ir. Ch. 16.

(*a*) *In re Atkinson*, 1 M., D. & D. 238.

(*b*) *Ex parte Byrom*, 3 M., D. & D. 55.

(*c*) *Pooley v. Quilter*, 2 De G. & J.

327; 27 L. J., Ch. 374; 4 Jur., N. S. 345; *Ex parte Reynolds*, 5 Ves. 707; *Ex parte Badcock*, M. & M'A. 231; *Ex parte Gover*, De G. 349.

CHAP. XV.

The official assignee improperly refusing to join in a suit, &c. is liable to be made a defendant, and may have to pay costs.

a defendant (*d*). So also, where the creditors' assignees sold the stock in trade and effects of the bankrupt to the bankrupt's father, the court refused to order the official assignee to execute the conveyance containing special covenants, without a reference to the registrar to settle the conveyance, and approve of a proper indemnity to the official assignee (*e*); but if he improperly refuse to join in a suit, and thereby occasion any extra costs, or embarrass the other assignees in the pursuit of proper litigation, the court, on his being made, as he is liable to be, a bankrupt, might refuse to allow him his costs (*d*); thus the official assignee has been held personally liable for the costs of an unnecessary separate appearance to a petition (*f*).

In general, if an official assignee joined in a petition or in appearing to a petition, in his official capacity, he did not pay costs (*g*); but where the petition was against one of the creditors' assignees, the court allowed the costs of a separate appearance (*h*); and if a petition of the official assignee and others is dismissed with costs, generally, the order for payment of costs may be enforced against him alone, in the same manner as against any other party (*i*), and the official assignee is liable to the costs of defending an action brought against him and the creditors' assignee, if he has joined in retaining the attorney (*k*); but if he has been joined as plaintiff in an action brought without his authority, he is entitled to be indemnified against the costs by the real plaintiff (*l*). If the assignees refuse to bring an action for the recovery of property alleged to belong to the bankrupt, this is not sufficient reason to remove them, but the creditor who insists upon the expediency of the proceeding will have liberty to bring the action in the names of the assignees, upon entering into a proper indemnity, and have free access to the proceedings to enable him to prosecute it (*m*).

If assignees refuse to bring an action for recovery of property, a creditor may do so in their names, indemnifying them.

The official assignee applied to the Court of Bankruptcy for an order on the creditors' assignee, who had joined him as plaintiff in an action at law, for an indemnity. As it was not disputed, that the action was for the benefit of the estate, the court ordered the petition to stand over till after the trial; and the petition coming on for directions after a verdict against the assignees, it appeared that prior to the commencement of the action the creditors' assignee had offered his personal indemnity to the official

(*d*) *Ex parte Evans*, 1 Mon. & A. 335; 3 Dea. & C. 470.

(*e*) *Ex parte Young*, 2 Dea. 240; 3 Mon. & A. 263.

(*f*) *Ex parte Hendrie*, 3 M. & Ay. 20.

(*g*) *Ex parte Benham*, 1 Dea. 26; 2

M. & Ay. 272.

(*h*) *Ex parte Gore*, 7 Jur. 136.

(*i*) *Ex parte Murray*, 1 M. & Ay. 475.

(*k*) *Sydney v. Belcher*, 2 M. & Rob. 325.

(*l*) *Laws v. Bott*, 16 M. & W. 300.

(*m*) *Ex parte Ryland*, 2 Dea. & C. 392.

assignee, and upon his renewing that offer the petition of the official assignee was dismissed with costs (*n*).

The assignees in instituting, prosecuting, defending or compromising suits should act under the direction of the court. (*See sect. 153 of the Act of 1849, already mentioned, p. 844.*)

Notwithstanding the imperative form of the words of this section, it has been held, that no objection can be taken by the parties to the action or suit in which the assignees are engaged either by plea in bar or motion to stay proceedings in the action or suit, on the ground that such assignees have not obtained the leave of the court to institute, proceed with or defend the action or suit; the only way in which the objection can be taken is, by an application to the Court of Bankruptcy to restrain the assignees (*o*); and, it is apprehended, that an order to that effect can only be obtained on the application of a creditor who has proved under the bankruptcy (*p*); and even such an application has been refused (*q*); but in the case last alluded to, the court granted a reference to inquire how much of the assets ought to be retained by the assignee to abide the result of the suit.

No objection by plea in bar or motion to stay proceedings can be taken by parties to an action, &c., although the assignees have not authority from the court to begin the action, &c.; application must be made to Court of Bankruptcy to restrain them.

It was argued, in the case of *Wyld v. Wyld* (*r*), that an award, where the arbitration was not in accordance with this section, would not bind the bankrupt's estate, but the court seemed to be of an opposite opinion; such an award was, however, held to bind the other party who had acquiesced in the arbitration and had taken up the award, and only raised the objection on finding it adverse.

Semble, an award is binding on the bankrupt's estate, although the reference has not been sanctioned by the court.

Assignees are not, however, bound by a bankrupt's submission to arbitration, if the bankruptcy happen before the award, unless they adopt the proceedings, as by attending the meetings under the reference, and raising no objection thereto (*s*). Assignees of the bankrupt are not persons claiming through or under the bankrupt within the meaning of 17 & 18 Vict. c. 125, s. 11, (Common Law Procedure Act, 1854,) otherwise they would be bound to submit to arbitration (*t*). The court will, however, at the instance of any person, even though not a creditor of the bankrupt, give

Assignees not bound by a reference, if bankruptcy happen before the award; but they may submit.

Assignees not within sect. 11 of C. L. P. Act, 1854.

Court will give

(*n*) *Ex parte Turquand*, 3 M., D. & D. 475.

(*o*) *Lee v. Sangster*, 2 C. B., N. S. 1; 26 L. J., C. P. 151; see *Piercy v. Roberts*, 1 M. & K. 4; *Ex parte Magnus*, 3 M., D. & D. 693; *Jones v. Yates*, 3 Y. & J. 373; *Sturgis v. Evans*, 9 L. T., N. S. 774.

(*p*) *Ex parte Magnus*, *supra*.

F.

(*q*) *Ex parte May*, 4 Dea. 60; M. & Ch. 285.

(*r*) 2 De G., F. & J. 642.

(*s*) *Dod v. Herring*, 3 Sim. 143; 1 Russ. & M. 153; *Marsh v. Wood*, 9 B. & C. 659; see Russ. on Arbitration, 38, 160-2, 2nd ed.

(*t*) *Pennell v. Walker*, 18 C. B. 651.

CHAP. XV.

the assignees leave to proceed, if an indemnity is given by any person requiring them to proceed.

the assignees leave to proceed, if it would have been right and proper for the bankrupt to have done so, had he not been bankrupt, on a sufficient indemnity being given to the assignees by the person requiring them to proceed, and will even order them to lend their names for the purpose of proceeding. Thus, where A. covenanted with the bankrupt to pay a third person a sum of money, the assignees were directed to sue A. on the covenant at the instance of the third person, offering a sufficient indemnity (*h*). *A fortiori* if the person desiring the assignees' names be a creditor who has proved, will he be entitled to the use of the assignees' names on giving a sufficient indemnity (*l*).

It has been held, that making an application to the Court of Chancery or the payment of money out of court, is not prosecuting a suit under the meaning of this section.

By sect. 153 of the Act of 1849, the consent of the commissioner only is required, with such assent of the creditors as he directs.

The section itself differs materially from the 6 Geo. 4, c. 16, s. 88: instead of the consent of a certain proportion of creditors, at a public meeting as required by the 6 Geo. 4, c. 16, s. 88, the consent of the commissioner only is required under the present statute; but with such assent of the creditors as the commissioner shall direct to be obtained.

An agreement to refer by the assignees may be made a rule of court.

By sect. 154 of the Act of 1849, if the assignees shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of any of her Majesty's superior courts of law at Westminster, whether such agreement contain a clause to that effect or not.

Advertisements calling meetings to compromise suits, must specify them. Bankrupt has no right to appear on application to compromise claims on behalf of the estate.

Where a meeting of creditors is called as to compromising suits, care must be taken that the advertisement state specifically the suits proposed to be compromised, and neither the bankrupts nor their representatives have any right to appear on applications to the court relating to the compromise of claims on behalf of the estate (*m*). Under the 6 Geo. 4, c. 16, s. 88, it has been held, that the creditors need not be personally present at a meeting to consent to the institution of a suit in equity; they can, at such meeting, vote by proxy (*n*). (*See Act of 1861, sect. 229, "Creditors present at any Meeting."*)

A supplemental suit by assignees was not within sect.

Under the Act 6 Geo. 4, c. 16, s. 88, if a suit had been commenced before the bankruptcy, a supplemental suit by the assignees was not within the section, and therefore did not require the

(*h*) *Ex parte Gausby*, 30 L. T. 337.

(*l*) *Re Meiklam*, 12 W. R. 442; *Ex parte Osborne*, 12 W. R. 722.

(*m*) *Ex parte Magnus*, 3 M., D. & D,

693.

(*n*) *Ex parte Belcher*, 3 Dea. 98; 3 Mon. & A. 448; *Bannatyne v. Leader*, 3 My. & C. 379.

consent of the creditors (*n*); it would seem, therefore, that such a case is not within the 153rd sect. of the Act of 1849. At the common law, as distinguished from statute, assignees in bankruptcy, whether official or otherwise, are liable in the same way as other persons in possession of the bankrupt's estate; and it will, as against persons claiming that property by a title not derived through or subsequent to the bankruptcy, be no defence that they are acting under the sanction of the Court of Bankruptcy; it will not even protect them from the costs of suit (*o*), even though there be no assets in the bankruptcy (*p*). In cases where the bankrupt would not be entitled to costs, his assignees will not be entitled; assignees made parties to a suit of foreclosure or redemption will not be entitled to their costs, unless they disclaim before suit instituted. To entitle assignees to costs in a suit of foreclosure or redemption, they must disclaim either before suit instituted (*q*), or so soon after suit commenced as they are aware they are incumbancers. It is not sufficient to entitle them to their costs that they disclaim by their answer, and were ready to disclaim before suit, had they been applied to (*r*). Where the official assignee appointed under an old bankruptcy appealed from a decree of the Vice-Chancellor, in a suit regarding the bankrupt's estate, to the Lords Justices, and did not succeed in any point to which the appeal was addressed, he was ordered to pay the costs of the appeal (*s*).

The official and creditors' assignees of a legatee and executor claimed from the testator's estate 350*l.*, and refused to concur in a sale of part of the testator's property. In consequence of this refusal a suit was instituted by the co-executor to administer the assets, and it appearing that nothing remained due to the bankrupt, the assignees were ordered to pay the costs, inasmuch as satisfactory accounts had been tendered to them before suit, and they were not entitled to insist upon a judicial decision on their claim (*t*). So assignees in bankruptcy were ordered, upon the admissions in their answer, to pay money into court, although they had, in compliance with the statute, paid the money over to the accountant-general in bankruptcy (*u*).

In an Admiralty suit, however, against a ship of which the bank-

CHAP. XV.

88 of 6 Geo. 4, c. 16; and *semble*, it is not within sect. 153 of the Act of 1849.

Assignees holding property with a title not derived through the bankrupt, cannot claim shelter under Court of Bankruptcy;

may have and pay costs although no assets;

will not get costs if made parties to a foreclosure suit, unless they disclaim before bill filed;

although not applied to.

Assignees ordered to pay costs, when satisfactory accounts of a testator's assets tendered before administration suit filed by them.

(*n*) *Bevan v. Lewis*, 1 Sim. 376; 2 Glyn & J. 245.

(*o*) *Appleby v. Duke*, 1 Ph. 272; *Clarke v. Wilmot*, 1b. 276; see *Andrews v. Sealy*, 8 Pr. 212; *Ward v. Abrahams*, 1 B. & Al. 367; *Ex parte Edwards*, Buck, 233.

(*p*) *Williams v. Nixon*, 2 Beav. 472.

(*q*) *Gabriel v. Sturgis*, 5 Hare, 96.

(*r*) *Ford v. White*, 16 Beav. 120.

(*s*) *Tucker v. Hernemann*, 4 De G., M. & G. 395.

(*t*) *Pattison v. Graham*, 2 S. & G. 207.

(*u*) *Rogers v. Grazebrook*, 6 Jur. 272.

CHAP. XV.

Assignees failing in an issue under Interpleader Act, pay costs.

If, in a suit begun with consent of creditors, costs are given against assignees, they may apply to commissioner to retain them.

An action may be brought against assignees for money had and received, under a void fiat, by the alleged bankrupt; but if he questions the fiat by an action against the assignee, the latter may ask the court for instructions.

rupt was owner commenced before the bankruptcy, and defended after the bankruptcy by the assignees, the court refused to make any order for costs against the assignees who had no assets, unless it should be shown that their continuing the defence was vexatious (*x*). This case, however, went on the ground that the proceedings were *in rem*, and that it was purely in the discretion of the court whether it would give costs personally against any party beyond the amount of the "*res*," *i. e.*, beyond the value of the ship which had been sold in the cause. So, where the assignees of a bankrupt, in an issue under the Interpleader Act, fail to sustain their claim to goods taken in execution, they pay the costs (*y*). If the conduct of the assignees has been proper as regards the bankrupt's estate, in prosecuting or defending an action or suit relating thereto, then, even though costs are decreed against them in the action or suit, they will be allowed them out of the estate of the bankrupt, if any. So, where a suit was commenced by them with consent of the creditors, and was dismissed with costs, although a Court of Equity has no jurisdiction to order the costs to be retained out of the estate, the assignee may apply to the commissioner (*z*).

On the principle above cited, that the assignees are liable as against persons not claiming under the bankruptcy, in the same way as any other person, who merely holds possession of the property of the bankrupt under colour of an assignment from him, would be, if he were still solvent; they are liable if the bankruptcy be void, as though they held possession under a void assignment; and, therefore, an action for money had and received may be maintained by the supposed bankrupt to recover money received by the official assignee under a void fiat; and although the official assignee was appointed at the instance of the bankrupt (*a*); but the court will extend to official assignees the same protection as courts of equity are accustomed to extend to receivers; and therefore, where the bankrupt seeks to invalidate the fiat by an action against the official assignee, such assignee should apply to the court for instructions (*b*); it is, however, very doubtful how far the court has power to restrain by injunction any proceeding by a stranger (*c*). (*See ante*, pp. 843, 844.)

(*x*) *Re Kindersley Castle*, 1 M. & Ay. 479, n.

(*y*) *Melville v. Smark*. 3 Scott, N. R. 357.

(*z*) *Ex parte Gibson*, 1 Mon. & A. 479; *Turner v. Hibbert*. 1 Mon. & A. 243.

(*a*) *Munk v. Clarke*, 3 M. & Scott, 463;

10 Bing. 102; 2 Scott, 475; 2 Bing. N. C. 299; see *Re Plumstead Water Works, Ex parte Hardinge*, 1 N. R. 40; *Re Bryant*, 2 Rose, 17.

(*b*) *Ex parte Rains*, 2 Dea. 229; 3 Mon. & A. 55.

(*c*) See *Re Bryant*, *supra*.

An action was, after a fiat had been annulled, brought by the alleged bankrupt against the official assignee to recover books, papers, &c. On the day after the action commenced a second fiat issued, under which he was declared bankrupt. The plaintiff obtained a verdict, but no judgment had been signed at the time the assignees were appointed under the second fiat, and notwithstanding notice of the appointment of assignees under the second fiat, the plaintiff signed judgment in the action; it was held, that the action was rightly commenced and prosecuted down to the date of the second fiat, and therefore that the verdict could not be impeached, but the assignees under the second bankruptcy having given the plaintiff's attorney notice not to proceed, he ought not afterwards to have signed judgment. The court therefore ordered a stay of proceedings on payment by the defendant of the costs incurred down to the date of the second fiat (*d*).

By 12 & 13 Vict. c. 106, s. 41, no official assignee shall be personally responsible or liable for any act done by him, or by his order or authority, in the execution of his duty as such official assignee, by reason of the petitioning creditor's debt, trading, or act of bankruptcy upon which any adjudication of bankruptcy shall have been grounded, or of any or either of such matters, being insufficient to support such adjudication; and no official assignee shall be deemed personally answerable for or by reason of his having received any money, bills, notes or other negotiable instruments under any bankruptcy in his character of official assignee, provided he shall have paid and deposited such money, bills, notes and other negotiable instruments during the prosecution of the bankruptcy into the Bank of England to the credit of the accountant in bankruptcy for the particular estate for which such money, bills, notes or other negotiable instruments shall have been received, and shall have given notice of such payment or deposit (as the case may be) to any person claiming such money, bills, notes or other negotiable instruments of the official assignee; and provided also, that the official assignee, after such payment or deposit, shall not have dealt with such money, bills, notes or other negotiable instruments otherwise than in the execution of his duty as official assignee, and under the order of the court; and if any action shall be brought against the official assignee, either solely or jointly with the creditors' assignee, in respect of such money, bills, notes or other negotiable instruments, it shall be lawful for a judge of the court in which the same shall

No act done by official assignee or his order to be impeached, because adjudication defective as to legal requisites.

(*d*) *Ouchterlony v. Gibson*, 6 Sc., N. R. 577; 4 Man. & Gr. 461.

CHAP. XV.

be brought, upon application of the official assignee, and upon an affidavit of facts, to set aside the proceedings in such action as far as the official assignee is concerned, with such costs, or without costs, as to the judge shall seem meet.

Sect. 41 of the Act of 1849 does not extend to claims for damages.

The latter part of this section has been held to apply only to cases in which, but for it, the assignee would have been liable for the monies which had been so paid, and it does not apply to claims for damages or any matters of that kind (*e*).

An official assignee and the sole trade assignee were sued in two actions by a party disputing the validity of the adjudication, and the trade assignee had taken the benefit of the Insolvent Debtors Act. The plaintiff in the actions had a title paramount and independently of the bankruptcy. The court, notwithstanding this section, refused to interfere to restrain execution against the official assignee on the judgments at law, as the result of the actions would not have been materially affected by the question of the validity of the bankruptcy (*f*).

By sect. 159 of the Act of 1849, every action against any one for acts done under this act must be begun within three months after the act done.

By 12 & 13 Vict. c. 106, s. 159, every action brought against any person for any thing done in pursuance of this act shall be commenced within three months next after the fact committed; and the defendant in any such action may plead the general issue, and give this act and the special matter in evidence at the trial, and that the same was done by authority of this act; and if it shall appear so to have been done, or that such action was commenced after the time limited as aforesaid for bringing the same, the jury shall find for the defendant; and if there be a verdict for the defendant, or if the plaintiff shall be nonsuited, or discontinue his action or suit after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall receive such full and reasonable indemnity as to all costs, charges and expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer. In the corresponding sect. (44) of 6 Geo. 4, c. 16, the defendant in such case was entitled to double costs, but it was held that the 6 Geo. 4, c. 16, s. 44, did not apply to actions brought against assignees, acting on their own responsibility, or other persons acting under their authority (*g*), but only to commissioners and others discharging a public duty;

(*e*) *Vansittart v. James*, 1 F. & F. 156.

(*g*) *Worth v. Budd*, 1 Dow. 328; 2 B.

(*f*) *Ex parte Johnson*, 4 De G. & S. & Adol. 172.
279; 20 L. J., Bcy. 20.

and it would seem from the case last cited that a person acting under the direction of the commissioner would be within the protection. So it has been held to apply to actions against assignees for acts done by them, for the purpose of taking possession of the bankrupt's property, on the part of the commissioner, or by messengers or others acting under his warrant: it did not apply to an action of trover brought against the assignees for a chariot seized by them on the premises of the bankrupt (*h*); nor to an action against the assignees for entering the house of a third person to seize the goods of the bankrupt; that not being an act done "in pursuance of the statute" (*i*); nor to an action of trespass by the bankrupt against the official assignee, to try the validity of the fiat (*k*).

Assignees in bankruptcy are in general bound by the same rules of practice in the prosecution and defence of actions, &c., as other litigants, save where certain exceptions are made by statute (*see post, pp. 868 et seq.*); so if they seek to set aside a judgment for irregularity, they must apply to the court within the same time after their appointment, as the bankrupt must have done, after he had notice of the irregularity (*l*), or they must give satisfactory reason for the delay (*m*). In a case in which execution was levied on the 1st of March, the sale taking place on the 7th and thirteen following days, the docket being struck on the 14th and notice given to the plaintiff and the sheriff on the 15th of the same month, the fiat being issued and assignees appointed on the 12th of April, who on the 13th gave notice to the sheriff that they claimed the goods, the judgment roll being carried in on the 19th; it was held that, although no motion was made till the 25th of April to set aside the judgment and writ of execution, it was not too late (*n*).

Under the general jurisdiction of the courts, to discharge the defendant on such terms as they shall think fit from arrest on mesne process, the court discharged the assignees upon common bail (*l*), in a case in which the bankrupt held his assignees to bail in an action for a sum of 4,000*l.*, as money had and received, which was instituted with a view to try the validity of the commission.

We have already seen that in actions by or against strangers not deriving title through the bankruptcy, the assignees stand in most respects in the position of other claimants of property and

(*h*) *Carruthers v. Payne*, 2 Moo. & P. 429.

(*i*) *Edge v. Parker*, 8 B. & C. 697.

(*k*) *Knight v. Turquand*, 2 M. & W. 101.

(*l*) *Chambers v. Bernasconi*, 6 Bing. 498.

(*m*) *Amadio v. Showell*, 1 B. C. Rep. 305.

(*n*) *Brooks v. Hodson*, 2 Dow. & L. 256; 8 Scott, N. S. 223; 13 L. J., C. P. 203.

Assignees in general bound by same rules of practice in actions, &c., as other litigants.

CHAP. XV.

Assignees are liable on contracts entered into by them express or implied.

are liable to damages and costs and to have decrees made against them in the same way as if they were mere assignees by deed of the property of the bankrupt without any judicial proceedings to confirm their title, and in like manner they become liable on any contracts entered into by them either express or implied. Thus, on their retainer of a solicitor to the bankruptcy, they are liable to him for costs after the election of assignees whether they have or have not assets of the bankruptcy, and if they have assets they are further bound out of such assets to indemnify the petitioning creditor, who is liable to his solicitor for the costs of the adjudication up to the date of the choice of assignees.

By stat. 12 & 13 Vict. c. 106, s. 114, the petitioning creditor shall at his own costs file and prosecute his petition, until the choice of assignees by the creditors; and the court shall, at or after the sitting for such choice, make order for the payment thereof out of the estate of the bankrupt, in course of priority to be settled by any general rule or order to be made in pursuance of this act. This rule has been extended to the costs of a debtor's petition, where filed *bonâ fide* and for the benefit of the creditors (*o*).

They are of course personally liable independently of the state of the bankrupt's assets for any tort committed by them, though committed while dealing in respect of the assets (*p*).

So, where the title of the assignees to any property of the bankrupt is disputed, they are merely in defending such property in the same position as any other claimant, and liable to damages and costs as other claimants would be, whether there are assets to indemnify them or not (*see ante*, p. 851). If, however, the case be a proper one to defend, and there are assets of the bankrupt, they will, although unsuccessful in the defence, but through no fault of their own, be allowed the costs out of the bankrupt's estate as expenses properly incurred in the administration of that estate.

As the assignees are liable on their own contracts, so if they employ the bankrupt as their agent they become liable on his contract, if made within his authority; as, for instance, for goods supplied to him in the way of his trade, after a resolution allowing him to carry on his trade has been confirmed (*q*).

So, if assignees employ a person in the conduct and management of the bankrupt's property, who misapplies or embezzles the money, they will be liable to the estate for the money so misapplied or embezzled, unless they have the sanction of the creditors

Under sect. 114 of the Act of 1849, the petitioning creditor's costs are to be provided for out of the estate.

This has been extended to debtor's petition.

Assignees are liable for torts committed, though in dealing with the assets.

They are also liable for costs of defending property supposed to belong to the bankrupt;

but they will be allowed them out of the assets, if any, where the case a proper one to defend. They are liable on contracts of the bankrupt as their agent, *e. g.* if allowed to carry on trade.

Also for conduct of agent

(*o*) *Ex parte Scott, re Gilliam*, 13 W.R. 88.

(*p*) *Early v. Garrett*, 9 B. & C. 928.

(*q*) *Kinder v. Howarth*, 2 Stark. 354.

CHAP. XV.

to their appointment of the agent (*r*). But otherwise where the assignees employ a person either from necessity or conformably with the common usage of mankind,—as, for instance, if they employ a broker to sell goods, and he receives the money, and immediately fails, without having paid it over; if the assignees used sufficient precaution in the choice of such person, they will not be liable for his default (*s*). Nor will they be held responsible for a loss sustained in the disposal of the bankrupt's effects, and not arising from their negligence or misconduct. So, where the bankrupt had assigned over his effects to trustees, who removed them to an auctioneer's for sale, in whose hands they were at the time the commission issued, and the assignees confirmed the order for sale, but the auctioneer, without the assent of the assignees, sold them at a credit, and shortly after became bankrupt, the assignees were not responsible for the loss sustained (*t*).

appointed by them, unless the appointment has been sanctioned by the creditors; but not if the agency a necessary one, as that of a broker, auctioneer, &c., and there has been no want of precaution in electing him.

If an assignee becomes bankrupt at the time that he is indebted to the bankrupt's estate for money retained or employed by him for his own benefit, the debt may of course be proved upon his estate (*u*), and his certificate will only free his person, his future effects will still remain liable for such part of it, together with interest, as shall not have been paid out of his estate. (12 & 13 Vict. c. 106, s. 156.) But his estate will not be liable to the 20*l.* per cent. on funds retained or misapplied by him (*x*).

On the bankruptcy of an assignee, who has retained, &c., monies, the debt may be proved against his estate, and his certificate will not free his future effects.

Assignees are liable each for his own default only, and not for the negligence or misconduct of his co-assignee (*y*); but if by the aid of one assignee, out of the course of his duty, the property under the bankruptcy be placed within the single power of the other assignee, both are liable for its misapplication (*z*).

Assignees not liable for co-assignees, unless assets improperly left in the power of defaulter.

Assignees are not liable for the rent of premises leased by the bankrupt, or for the nonperformance of the covenants unless they accept the lease (*a*). (See 12 & 13 Vict. c. 106, s. 145, pp. 287—299.)

Not liable for rent, &c., of bankrupt's leaseholds, unless accepted.

The court has no jurisdiction to indemnify assignees against the consequences of their own acts, although done strictly in the execution of the duties cast upon them by their office; it cannot, for instance, relieve them in any manner from their liability to the

Court cannot indemnify assignees against liability for

(*r*) *Re Litchfield*, 1 Atk. 86.

(*s*) *Ex parte Belchier*, Amb. 218; 1 Kenyon's Rep. 38; *Ex parte Lane*, 1 Atk. 89; *Ex parte Keys*, 2 Dea. & C. 633.

(*t*) *Ex parte Turner*, Mon. & M.A. 52.

(*u*) See *Ex parte Spong*, 1 Rose, 133; *Ex parte Bignold*, 2 Mad. 470; *Ex parte Stonehouse*, Buck, 531.

(*x*) See *Ex parte Goldsmith*, 1 Glyn & J. 405.

(*y*) *Primrose v. Bromley*, 1 Atk. 88; *Re Litchfield*, Ib. 87; *Ex parte Griffin*, 2 Glyn & J. 114.

(*z*) *Ex parte Griffin*, supra.

(*a*) *Bourdillon v. Dalton*, 1 Peake, 312; 2 Esp. 233; see *Ex parte Quantock*, Buck, 189.

CHAP. XV.

bankrupt's
property sold,
if fiat an-
nulled.

Assignees are
liable to third
parties for acts
not justified by
the fiat and
their appoint-
ment.

The defendant
in an action
improperly
brought by
assignees may
get an injunc-
tion against
them from the
Court of Bank-
ruptcy.

Court of Bank-
ruptcy will
grant an in-
junction where
defendant has
clear legal
right of set-off.

bankrupt, in respect of property disposed of under the adjudication, if it be annulled (*b*).

In general they are liable in their individual capacity for any cause of action arising to others from their acts, which they cannot justify under the adjudication and their appointment; as where the bankrupt was under a contract to build a ship under the superintendence of a surveyor of the purchaser, and at the time of the bankruptcy the ship was partly built, and after the bankruptcy the assignees refused the superintendence of the surveyor, finished the vessel, and sold it to another party; it was held that the general property in the ship had sufficiently vested in the purchaser under the contract, to enable him to maintain trover against the assignee (*c*); but the official assignee is in some cases indemnified by statute, and the creditors' assignees, it would seem also, so long as they act under the authority of the commissioner. If one assignee pay a sum for which both were liable, he shall have contribution from the other (*d*); and where two of three assignees became bankrupt, and the solvent assignee paid a debt due from the three to the bankrupt's estate, it was held that he was entitled to prove a third of the debt against the estate of each of the bankrupt assignees (*e*).

The assignees are, however, subject to the jurisdiction of the Court of Bankruptcy, and, therefore, where an action has been instituted by them which is clearly against equity, the defendant is not driven to file a bill in Chancery to restrain them, but may apply to the Court of Bankruptcy, which will exercise its equitable jurisdiction over them by injunction; although it may be doubtful whether it could exercise a like power over a stranger (*f*).

So, where a creditor has a clear legal right of set-off in an action brought against him by the assignees, the court will enjoin the assignees proceeding in the action, and refer it to the official assignee to take the account, and state the balance (*g*).

So, also, where the assignees brought an action against an annuity creditor upon a cross demand, and the defendant pleaded the value of the annuity as a set-off, although the commissioner had no jurisdiction to value the annuity for the purpose of a set-off,

(*b*) *Re Bryant*, 2 Rose, 17.

(*c*) *Clarke v. Spence*, 6 N. & M. 399; 4 Adol. & E. 448; see *Holderness v. Rankin*, 28 Beav. 180; 29 L. J. Ch., 753; on appeal, 2 De G., F. & J. 258; the appeal however turned on a different point.

(*d*) *Hart v. Biggs*, 1 Holt, 245; *Lin-*

gard v. Bromley, 1 V. & B. 114.

(*e*) *Ex parte Hunter*, Buck, 352.

(*f*) *Ex parte Booth*, 4 D. & Ch. 211; 2 M. & Ay. 93, see ante, p. 852.

(*g*) *Ex parte Clegg*, 1 Mon. & A. 91; 3 Dea. & C. 505; *Ex parte Pearce*, 2 M., D. & D. 142.

yet on the petition of the creditor, the assignees were restrained from proceeding in the action (*h*), and a reference was ordered to take the account, allowing the value of the annuity, the proof to be for the balance only (*h*).

Assignees cannot be sued at law or by bill in Chancery, at the suit of a creditor, for dividends declared, the proper remedy is by an application to the Court of Bankruptcy.

By sect. 190 of the Act of 1849, no action for any dividend shall be brought against any assignee by any creditor, who shall have proved under the bankruptcy, but if the official assignee shall refuse to pay any such dividend, the court may order payment thereof with interest for the time that it shall have been withheld, and may also order the costs of the application; and interest is in such case calculated at 5*l.* per cent. per annum (*i*).

It is remarkable that this section is not repealed by the Act of 1861, while at the same time the custody of the bankrupt's assets is taken from the official assignee and vested in the creditors' assignee, so that if this is read strictly, the official assignee would have to pay the dividend while the assets were entirely beyond his control; it has been supposed that the creditors' assignee should be first ordered to transfer the gross sum payable for dividend to the official assignee, who would then distribute it to the creditors. Should this not be the correct view the enactment must be construed as if the words "creditors' assignees" were substituted for "official assignee," which seems a strong strain to put upon the construction of an enactment. It has been held, that this remedy by petition in bankruptcy is only as between the assignee and a creditor who has proved; if the creditor sell his right to dividend, the purchaser, it is said, cannot petition, but is left to the ordinary remedy for enforcing his contract (*k*).

And the assignees may file a bill in equity against the representative of a deceased assignee for an account of dividends misapplied by (*l*), or that remained in the hands of the deceased assignee unclaimed (*m*).

The remedy by petition for payment of dividends being substituted for the former remedy by action, the application can be resisted by the assignee on those grounds only of which the assignees might formerly have availed themselves, as a defence to an

Assignees cannot be sued at law or in equity for dividends declared.

The Court of Bankruptcy should be applied to, by petition, under sect. 190 of the Act of 1849.

Sect. 190 of the Act of 1849 not repealed.

Quære, effect of non-repeal on relative position of official and creditors' assignees under Act of 1861.

The right to petition for dividend does not extend to a purchaser from the creditor entitled, *semble*.

Assignees may file bill against representative of deceased co-assignee for dividends misapplied.

Applications by petition for dividends can be resisted

(*h*) *Ex parte Law*, De G. 378; 11 Jur. 112.

(*i*) *Ex parte Loxley*, 1 Gl. & J. 345.

(*k*) *Ex parte Richards*, 4 D. & Ch. 190.

(*l*) *Wackerbath v. Powell*, 2 Glyn & J. 151.

(*m*) *Green v. Weston*, 3 Myl. & C. 385; 3 Mon. & A. 414; see, however, pp. 887, 888.

CHAP. XV.

only by same defence as action formerly.

If an issue is directed to try validity of debt, the assignee will be personally liable for interest and costs, if debt supported.

Creditor receiving dividends not bound to refund, although paid in full by surety. *Sed quære*, as to rights of the latter.

Assignees have an action for money had and received to use of bankrupt.

Other cases in which assignees have particular rights of action.

action (*n*). He cannot dispute the debt; he must make that the subject of a distinct petition to be preferred to the court; and while the proof stands upon the proceedings, it is, of course, to order the payment of the dividend, unless a cross application, impugning the proof, is made within a reasonable time (*o*). The court sometimes directs an issue to try the validity of the debt; but in such case, if the verdict is in favour of the debt, the assignee will be personally answerable for interest upon the dividends retained, and costs (*p*). Again, if a creditor holds a bill as a collateral security for a debt proved under the bankruptcy, and the bill is afterwards paid in full, he cannot be called upon to refund the dividends received upon his proof prior to the payment of the bill (*q*); but it would seem that he would be liable to the party, who, as a surety, had paid the bill to refund to him any dividends recovered against the principal debtor.

Questions as to the form in which the assignees should sue, and whether at law or in equity, must be for the most part determined by the general law of pleading, and consequently do not come properly within the scope of this work; but there are a few cases in which the particular nature of the assignee's position may modify the form of the action, and these it may be right to notice. They may have an action in every case in which the bankrupt himself might, but for his bankruptcy, have had one, and in some in which he would be precluded from having one. Where the bankrupt might have an action for money had and received to his use before the bankruptcy, there the assignees will have an action for money had and received to the use of the bankrupt; and where money, part of the bankrupt's estate, has been applied by the bankrupt or some one on his behalf, after an act of bankruptcy, or by way of fraudulent preference in contemplation of bankruptcy, there, though the bankrupt would have no action, yet the assignees will have one for money had and received to their use. So, where the bankrupt's solicitor, to whom he was largely indebted, received money from the agent of the bankrupt on his account, the assignee cannot sue for this as money had and received to their use, unless it was received after the bankruptcy or by way of fraudulent preference (*r*); but they ought to bring their action for money had and received to the use of the bankrupt: in such an action the

(*n*) *Ex parte Hodges*, Buck, 524; *Ex parte Alexander*, 1 Dea. & C. 513.

(*o*) *Ex parte Lees*, 3 Dea. 287; 3 Mon. & A. 591.

(*p*) *Ex parte Harrison*, Mon. 250.

(*q*) *Ex parte Carr*, 2 Dea. 273; 3 M. & Ay. 64.

(*r*) *Pennell v. Aston*, 14 M. & W. 415; 14 L. J., Exch. 309.

defendants might probably have pleaded a set-off, and in all probability it was to avoid such a plea that the erroneous form had been attempted in the case in question. Even if money has been paid to the bankrupt himself after an act of bankruptcy, the assignees have an action for money had and received to their use (s).

So, where the assignees declare in trover for goods of the bankrupt converted after the bankruptcy, the conversion subsequently to the bankruptcy is a material allegation, and must be proved under the general issue; and where the conversion proved was by sale of the goods before the bankruptcy, the assignees were held not entitled to waive the sale of the goods as a conversion, and to rely on a subsequent demand and refusal (t).

So, in general, if the cause of action arose to the bankrupt before the commission of the act of bankruptcy, the assignees must sue as such and describe themselves as assignees in the declaration; but if it arose after the act of bankruptcy, and either before or after the filing the petition for adjudication, they may sue in their individual capacity, as in their own right, without describing themselves as assignees (u). They may also sue in their own name for a chose in action of the bankrupt.

Where a cause of action arises before act of bankruptcy, the assignees must sue as such.

If after, they may sue in their own name, as in their own right.

As to the right of the assignees to sue in trespass *quare clausum fregit*, for an injury done to the property of the bankrupt before the act of bankruptcy, see *ante*, *Property passing to the Assignees*.

A declaration alleged an account stated with the bankrupt, and promises to the assignees, and the evidence was of an account stated with the bankrupt, and promises to him, it was held sufficient (x); for in such a case no express promise is necessary, as the debt to the bankrupt, whether accompanied by an express promise or not, will raise an implied promise to pay the assignees after the bankruptcy.

So, trespass being an action for injury done by interference with the actual possession of the plaintiff, it follows that in seeking to recover for the taking of the goods of the bankrupt after an act of bankruptcy committed, but before the actual seizure of the goods by the messenger, and more especially before the appointment of assignees, the proper form of action is trover not trespass. Again, where goods have been sold to a creditor *malâ fide*, and by way of fraudulent preference, before an act of bankruptcy committed, but in contemplation of bankruptcy, the mere detainer of

Trover not trespass, the proper form where goods of the bankrupt taken after act of bankruptcy.

(s) *King v. Leith*, 2 T. R. 141.

(t) *Edwards v. Hooper*, 7 Jur. 378.

(u) *Evans v. Mann*, 1 Cowp. 569; *Thomas*

v. Rideing, Wightw. 65.

(x) *Skinner v. Rebow*, 1 Sel. N. P. 290.

CHAP. XV.

In what cases demand should be made by assignees before action brought.

Where bankrupt a partner, trover for goods of partnership sold, not the correct form of action.

Assignees should sue in tort in certain cases if a set-off might be pleaded.

the goods by the creditor will not in such case be a wrongful conversion, for the sale was not void but only voidable by the assignees, there ought, therefore, in such a case to be a demand made before action brought (z). It would be otherwise if there was an actual conversion, which would preclude the necessity of a demand: but merely receiving the money due on a bill of exchange would not be a conversion of it for this purpose, and in such a case an actual demand should be made (z). So, where the bankrupt is in partnership, his assignees become tenants in common with the other partners in the goods of the partnership, and so cannot maintain *trover* against a person who sells such goods by the direction of the solvent partners (a).

Assignees have of course the same option as to form of action that other plaintiffs in similar circumstances would have, it may therefore be often advisable for them to sue in tort instead of contract, in order to prevent a set-off being offered in defence. Thus, a plea of mutual credit by way of set-off cannot be pleaded to a declaration by assignees, charging the defendants with having received a sum of money from the bankrupt for the purpose of meeting an acceptance, and neglecting to apply it, whereby the bankrupt's estate sustained a damage, the claim being for unliquidated damages (b).

As to the right of pleading a set-off, see *Proof of Debt, Mutual Debt and Credits*.

As before the Act of 1861, the official and creditors' assignees were joint tenants of the bankrupt's property and jointly interested in all his rights, it was necessary that they should in all actions or suits by them as assignees be joined as co-plaintiffs (c), subject, however, to the alterations in practice effected by the Common Law Procedure Acts.

But it seems, even before the stat. 6 Geo. 4, c. 16, if the assignees were assignees at the time of the issuing of the writ, the action might be continued in their names, although their title were afterwards determined by the choice and appointment of new assignees (d): at least the objection could not be taken upon the general issue.

By sect. 157 of the Act of 1849, actions, &c., not abated

By the Act of 1849, sect. 157, whenever an assignee shall die or be removed, or a new assignee shall be chosen, no action at law or suit in equity shall be thereby abated, but the court in

(z) *Nixon v. Jenkins*, 2 H. Bl. 135; *Jones v. Fort*, 4 M. & R. 547; see *Young v. Billiter*, 8 H. of L. Ca. 682; 30 L. J., Q. B. 153; 7 Jur., N. S. 269.

(a) *Lewis v. White*, 8 L. T., N. S. 320.

(b) *Bell v. Carey*, 8 C. B. 887.

(c) *Snelgrove v. Hunt*, 2 Stark. 424.

(d) *Page v. Bauer*, 4 B. & Al. 345; *Staples v. Holdsworth*, 5 Scott, 432.

CHAP. XV.

which any action or suit is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees in the same manner as if he had originally commenced the same. This clause is similar in all respects to the 6 Geo. 4, c. 16, s. 67, and therefore the decisions upon the one apply equally to the other. It has been decided that the clause applies only to the case where the assignee removed, &c. was plaintiff, and not where he was defendant in the suit, in which latter case the new assignee must be brought before the court by the ordinary means (*d*). The word "chosen" in this section has been held to apply to official as well as to creditors' assignees (*e*). And the rule to enter on the record a suggestion of the death of an assignee, plaintiff in an *action*, is absolute in the first instance, without obtaining a rule *nisi* (*f*). And the assignee who continues, by suggestion on the record, an action commenced by his predecessor, may recover a penalty as well as his predecessor (*g*). An assignee newly appointed may also maintain debt on a judgment obtained by the former assignee, who has been removed (*h*). If an assignee, removed, be indebted to the estate for money received by him, it seems that the assignee newly appointed may maintain an action for money had and received against him for the amount (*i*); but as to this, *see post*, p. 888, *Remarks on Green v. Weston*.

by death, &c., of assignee.

The court will, upon suggestion, substitute the new name.

Decisions on this sect. the same as on sect. 67 of 6 Geo. 4, c. 16.

If the assignee removed, &c., was defendant, the section does not apply.

Action may be continued by substituted assignee, though for a penalty or for debt on a judgment.

If an assignee die indebted to the bankrupt's estate, leaving real, but no personal property, the debt was formerly deemed a lien upon his real property, and the commissioners specialty creditors, a counterpart of the assignment, &c. being always executed by the assignees (*k*).

Now, as has been seen, the property in the bankrupt's assets becomes divested out of the official assignee from the time a creditors' assignee is appointed, and from that time the creditors' assignees ought to be plaintiffs without joining the official assignee.

In actions at law for property to which the bankrupt was only equitably entitled, of course the action should be brought in the name of the legal owner or trustee, who will be obliged to lend his

In actions at law for property to which bankrupt en-

(*d*) *Bainbrigge v. Blair*, 1 Younge, 386; *Mendham v. Robinson*, 1 M. & K. 217; see *Lash v. Miller*, 1 Jur., N. S. 457; *Westall v. Sturges*, 4 M. & P. 217.

(*e*) *Man v. Ricketts*, 1 Ph. 617.

(*f*) *Westall v. Sturges*, 4 M. & P. 217.

(*g*) *Bates v. Sturges*, 7 Bing. 587.

(*h*) *De Cosson v. Vaughan*, 10 East, 61.

(*i*) *Smith v. Jameson*, 1 Peake, 279; see *Wray v. Barwis*, 1b. 109.

(*k*) *Primrose v. Bromley*, 1 Atk. 88; see *Wackerbath v. Powell*, 2 Glyn & J. 151.

CHAP. XV.

titled equitably only, the assignees may use name of legal owner; wife must be joined in suing for property, her chose in action *dum sola*.

Assignees may join with solvent partners to recover joint debt.

If they will not join, assignees should proceed under sect. 152 of Act of 1849.

The assignees under separate fiats against persons having joint cause of action must all join and must be distinctly described.

name to the assignees in the same manner as to the bankrupt himself, had he not become so (*l*). In like manner a chose in action of a wife *dum sola* cannot be recovered by the husband's assignees suing as such alone, the wife must in some way be joined, and it would seem the proper form of action is by the assignees joining the bankrupt's wife (*m*). This seems the proper form of action whenever the right in the wife is of such a kind; if it was the right of the husband alone and not his merely in right of his wife, it would pass to his assignees (*n*).

So, if a separate fiat be sued out against one of several partners, the assignees of the bankrupt partner may join with the solvent partners in an action for a joint debt (*o*); or, if the partners will not consent to join, then the assignees may proceed as directed by 12 & 13 Vict. c. 106, s. 152, which provides that if any person adjudged bankrupt shall at the time of the adjudication of bankruptcy be a member of a firm, it shall be lawful for the court to authorize the assignees, upon their application, to commence or prosecute any action at law or suit in equity, in the name of such assignees and of the remaining partner, against any debtor of the partnership, and such judgment, decree or order may be obtained therein as if such action or suit had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void: provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and, if no benefit be claimed by him by virtue of the said proceedings, he shall be indemnified against the payment of any costs in respect of such action or suit, in such manner as the court may direct; and it shall be lawful for such court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action or suit as such court shall direct.

This is similar to 5 & 6 Vict. c. 122, s. 31.

Where there are separate adjudications against two or more persons who have a joint cause of action, the assignees under all the adjudications must join in bringing the action (*p*).

They ought not to describe themselves as assignees of all the bankrupts, but each set of assignees must be distinctly described as the assignees of the bankrupt whom they represent (*q*).

(*l*) *Ex parte Coysegame*, 1 Atk. 193.

(*m*) *Sherrington v. Yates*, 12 M. & W. 855; 1 D. & L. 1032; 13 L. J., Exch. 249; overruling *Yates v. Sherrington*, 11 M. & W. 42; see also *Pierce v. Thornley*, 2 Sim. 167.

(*n*) *Richbell v. Alexander*, 10 C. B., N. S. 324; 30 L. J., C. P. 268.

(*o*) *Thomason v. Frere*, 10 East, 418.

(*p*) *Streatfield v. Halliday*, 3 T. R. 779.

(*q*) *Ray v. Davies*, 8 Taunt. 134.

CHAP. XV.

But they cannot sue for a joint debt, and also for separate debts due to each, in the same action, even although the same persons be assignees under each bankruptcy (*r*).

Where the adjudication is against two or more partners, the assignees may bring an action to recover a debt due to the separate estate of one of them, and may describe themselves in the declaration as the assignees of that one only (*s*), and they may declare in the same action for separate as well as joint debts (*t*).

So, in actions or suits against assignees, both the official and creditors' assignees should, in general, have been joined, unless where the action was founded merely in tort, in which case the plaintiff had the option to join them or not. Now, however, where the cause of action arises after the election of the creditors' assignees, or is limited to matter arising in respect merely of a title to property of the bankrupt, as is the case in most suits in equity, the creditors' assignees alone seem the proper parties, and a risk of costs is in most cases incurred by making the official assignee a party. Where, however, it is sought to compel the execution of any power over the bankrupt's property, there the official assignee would seem still a necessary party, as such powers are still, it would seem, only exercisable by the assignees jointly. (*See ante*, p. 820.)

If the cause of action accrued before the act of bankruptcy, the defendant in an action by assignees may avail himself of every defence he could have set up to an action for the same cause by the trader, if he had not become bankrupt. Perhaps an action or suit to recover property given to a creditor, before an act of bankruptcy, but in contemplation of bankruptcy, with a view of giving him a fraudulent preference, is the only exception to this rule.

The rule is sufficiently exemplified by the cases before cited as to property passing to the assignees, subject to all the liabilities incident to it in the hands of the bankrupt.

If the cause of action has accrued after the act of bankruptcy, and the subject of it has passed to the assignees under their appointment, the defendant can set up no other defence to the action, except that of disputing the bankruptcy, than he might have done if the action had been brought and had lain at the suit of the assignees in their individual capacity.

The assignees are, however, not bound by an assignment of the bankrupt made in fraud of his creditors, either as being a fraudu-

But they may not in the same action sue for joint and separate debts.

Assignees, under a fiat against partners, may, in the same action, declare for separate and joint debt.

Formerly both official and creditors' assignees joined as defendants in actions, except in tort.

Now creditors' assignees alone defendants, after their election. But to compel execution of powers over bankrupt's estate official assignee still a necessary party.

Where cause of action accrues before act of bankruptcy, defendant has same defence against assignees as he might have had against trader.

Where cause of action accrues after act of bankruptcy, defendant can only defend as if action brought by assignees in individual capacity.

(*r*) *Hancock v. Haywood*, 3 T. R. 433. 399.

(*s*) *Stonehouse v. De Silva*, 3 Camp.

(*t*) *Graham v. Mulcaster*, 12 Moore, 327.

CHAP. XV.

Assignees not bound by assignment in fraud of creditors.

Actions begun by bankrupt may be continued or abandoned.

Assignees continuing action under name of bankrupt till judgment; and must give security for costs.

Under sect. 142 of 15 & 16 Vict. c. 76, bankruptcy of plaintiff not pleadable in bar to action, if assignees elect to continue and give security for costs.

If assignees proceed and fail, bankrupt liable for costs in spite of certificate.

But court will, in general, order costs out of estate.

lent preference or void under the stat. of Eliz., or as an act of bankruptcy; and in such a case they may authorize a tenant of the bankrupt to defend an ejectment against the persons claiming under the fraudulent assignment, even where the tenant had at the instance of the bankrupt attorned to the persons so claiming, the attornment being considered invalid, as obtained by fraud (*u*).

Where an action has been brought by the bankrupt before the filing the petition for adjudication, the assignees may either continue it, or abandon it, and bring another action for the same cause. If they continue it, they must carry on the proceedings in the name of the bankrupt until judgment, when, and not before, they make themselves parties to the record by *scire facias* (*x*). And if the assignees proceed with the action, they must give security for all the costs; and this being a matter of right, the defendant may apply at any time before a fresh step is taken in the cause (*y*). And if, after a verdict for plaintiff and a rule for a new trial made absolute, the plaintiff becomes bankrupt, he will be compelled to give security for costs, unless there is an affidavit expressly denying that the assignees will interfere with the action; the absence of any affidavit, that the action is carried on for their benefit, is not sufficient (*z*).

By 15 & 16 Vict. c. 76, s. 142, the bankruptcy or insolvency of the plaintiff in any action which the assignees might maintain for the benefit of the creditors shall not be pleaded in bar to such action, unless the assignees shall decline to continue and give security for the costs thereof, upon a judge's order to be obtained for that purpose, within such reasonable time as the judge may order; but the proceedings may be stayed until such election is made, and, in case the assignees neglect or refuse to continue the action, and give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy.

When the assignees proceed in the action, the bankrupt, if they fail, is personally liable for the costs, notwithstanding his bankruptcy and certificate. This is a hardship at law, against which the court will protect a bankrupt who has acted fairly; and, upon petition, it will in general order the assignees to pay the costs out of the estate. But in a case where the bankrupt had induced his assignees to continue the action, by wilful misrepresentations, the court refused to relieve him, and dismissed

(*u*) *Doe v. Broom*, 7 A. & E. 447.

(*x*) *Kretchman v. Beyer*, 1 T. R. 463;
and see *Winter v. Kretchman*, 2 T. R. 45;

Hewitt v. Mantell, 2 Wils. 372.

(*y*) *Mason v. Polhill*, 2 Dow. 61.

(*z*) *Denton v. Williams*, 8 Dow. 123.

his petition with costs (*a*). If a suit in chancery has been commenced by the bankrupt previously to the issuing of the fiat, his bankruptcy does not actually abate the suit, but the court will allow the assignees a fortnight's time before the dismissal of the bill to consider whether they will adopt it or not (*b*). Assignees adopting a suit, formerly did so by supplemental bill (*c*); and if the bankruptcy occurred, pending proceedings in the Master's office after a decree, the court would, on motion, if necessary, stay the assignees from proceeding, till they had made themselves parties to the suit (*d*).

Court gives assignees a fortnight to elect to proceed with suit in equity begun by bankrupt.

The practice of the Court of Chancery no longer requires a supplemental bill to make the assignees parties, they may be made so by an order obtained under 15 & 16 Vict. c. 86, s. 52 (*e*).

By 15 & 16 Vict. c. 86, s. 52, assignees now made parties to pending suit, by order merely.

In case of the bankruptcy of the plaintiff, the practice now is, for the defendant to move that the assignees make themselves parties within a limited time, or the suit be dismissed (*f*). But if there are two plaintiffs, the bankruptcy of one will not prevent the bill being dismissed for want of prosecution (*g*); and if a suit be commenced against a trader, his subsequent bankruptcy will not abate it (*h*); but though not, in strictness, abated, the suit is defective, and the plaintiff must, under the former practice, have filed a supplemental bill to make the assignees parties: his course now is to obtain an order under the above section to prosecute the suit against them. But where the defendant becomes bankrupt, he cannot move that the plaintiff should file a supplemental bill within a given time against the assignees or the bill be dismissed (*i*).

Defendant moves that assignees elect or that suit be dismissed.

Bankruptcy of defendant makes suit defective.

Plaintiff formerly filed supplemental bill to make assignees parties.

If a petitioner in bankruptcy becomes bankrupt, the rule is, that his assignees, if they would have the benefit of the petition, *must* file a supplemental petition, otherwise the first will be dismissed (*k*); but probably now they would be allowed to amend the petition, stating the bankruptcy of the petitioner and their appointment as assignees.

In general after bankruptcy, if the assignees are made parties, the bankrupt has no right to be heard on any application in respect of his original interest in the suit, but though he remains a formal party to the record, he can only speak through his assignees who

After bankruptcy the assignees represent the bankrupt in any suit as

- (*a*) *Ex parte Seaman*, 1 Glyn & J. 260. *Porter v. Cox*, 5 Mad. 80; Buck, 469;
 (*b*) *Wheeler v. Malins*, 4 Mad. 171; *Huntingtower v. Douglas*, 7 Jur. 8.
Porter v. Cox, 5 Mad. 80; Buck, 469. (*g*) *Caddick v. Masson*, 1 Sim. 501.
 (*c*) See *Randall v. Mumford*, 18 Ves. 424. (*h*) *Rutherford v. Miller*, 2 Anstr. 458;
 (*d*) *Williams v. Kinder*, 4 Ves. 387; and see *Whitcomb v. Minchin*, 5 Mad. 91.
 and see *Russell v. Sharp*, 1 V. & B. 500. (*i*) *Manson v. Burton*, 1 Y. & C. C. 626.
 (*e*) *Lash v. Miller*, 1 Jur., N. S. 457. (*k*) *Ex parte Birdwood*, Buck, 99, ante,
 (*f*) *Randall v. Mumford*, 18 Ves. 424; Interlocutory Applications.

CHAP. XV.

to his original interest therein.

Bankrupt can only speak through them.

Exception in case of foreclosure suit, *quære*.

represent all his interest (*l*); but where the plaintiff, in a suit of foreclosure, became bankrupt, and the assignees had made themselves parties by supplemental bill, the court, on the application of the assignees, without the consent of the bankrupt, refused to make an immediate decree under the stat. 7 Geo. 2, c. 20, s. 2 (*m*), as within the words of the statute the bankrupt was a defendant having a right to redeem.

In all actions by and against assignees of a bankrupt, the character in which the plaintiff or defendant is stated on the record to sue or be sued shall not in any case be considered in issue, unless specially denied. (*Reg.-Gen.*, Feb. 10, 1853.)

By stat. 12 & 13 Vict. c. 106, s. 233, if the bankrupt shall not (if in the United Kingdom at the date of the adjudication), within two calendar months (*n*) after the advertisement of the bankruptcy in the London Gazette, or (if in any other part of Europe at the date of the adjudication) within three months after such advertisement, or (if elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action, suit or other proceeding to dispute or annul the fiat, or the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged bankrupt, that such person so adjudged bankrupt became a bankrupt before the date and suing forth of such fiat, or before the date and filing of the petition for adjudication, and that such fiat was sued forth, or such petition filed, on the day on which the same is stated in the Gazette to bear date.

Sect. 233 of the Act of 1849 does not apply to a suit by assignees to set aside a fraudulent transfer of property of bankrupt; nor to criminal prosecution against the bankrupt.

This is similar to 5 & 6 Vict. c. 122, s. 24. A suit by the assignees to set aside a transfer of real and personal estate of the bankrupt, made with a view to withdraw the property from the reach of the creditors, is not such a suit as the bankrupt could have instituted, and therefore is not a suit within the 233rd section of the statute (*o*). The section does not apply to cases of criminal prosecution against the bankrupt (*p*).

(*l*) See *Davis v. Snell*, 28 Beav. 321; on appeal, 2 De G., F. & J. 463; and see also *Re Young*, 12 W. R. 537. If a bankrupt be made a party, even though a fraud be alleged against him, he may demur, *Gilbert v. Lewis*, 2 J. & H. 452; on appeal,

1 De G., J. & S. 38.

(*m*) *Garth v. Thomas*, 2 S. & S. 188.

(*n*) See 17 & 18 Vict. c. 119, s. 24.

(*o*) *Pennell v. Hume*, 3 Drew. 337; 25 L. J., Ch. 30; 1 Jur., N. S. 669.

(*p*) *R. v. Lyons*, 9 Cox, C. C. 299.

It has been held, that the action, suit or other proceeding to dispute or annul the fiat need not of necessity have been instituted in England, and proceedings for that purpose in a colonial court where the bankrupt was resident in a colony were held sufficient to enable him to dispute the validity of the adjudication against him (*q*).

By stat. 12 & 13 Vict. c. 106, s. 234, in any action, other than an action brought by the assignees for any debt or demand for which the bankrupt might have sustained an action, had he not been adjudged bankrupt, and whether at the suit of or against the assignees, or against any person acting under the warrant of the court, for anything done under such warrant, no proof shall be required, at the trial, of the petitioning creditor's debt, or of the trading or act of bankruptcy respectively, unless the other party in such action shall, if defendant, at or before pleading, and if plaintiff, before issue joined, give notice in writing to such assignees or other person that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignees or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignees or other person shall be entitled to the costs occasioned by such notice; and such costs shall, if such assignees or other person shall obtain a verdict, be added to the costs, and if the other party shall obtain a verdict, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignees or other person.

CHAP. XV.

But sect. 233 applies to action, &c., begun in colonial court to annul or dispute fiat.

By sect. 234, no proof can be required in any action which bankrupt might have brought, of act of bankruptcy, &c., unless notice of intention to dispute given before pleading, &c.

Assignees to be entitled to the costs of such notice, if matter disputed, proved.

This section, with some difference in the former part, is similar to the 6 Geo. 4, c. 16, s. 90; we shall therefore give some of the decisions under the latter section. It has been held that the 6 Geo. 4, c. 16, s. 90, did not apply to a feigned issue under the Interpleader Act, to ascertain the title of the assignees to goods, &c., seized under an execution (*r*). A plea to an action by assignees, "that F. was not duly declared a bankrupt," does not operate as a notice to dispute the bankruptcy under this section (*s*).

Sect. 90 of 6 Geo. 4, c. 16, held not to apply to feigned issue under Interpleader Act.

It extends to the case where an assignee is sued in trover, and it appears that he claims the goods as belonging to the bank-

Does apply where assignee sued in trover,

(*q*) *Ex parte Bunny*, 1 De G. & J. 309.

(*r*) *Lott v. Melville*, 9 Dow. 882.

(*s*) *Moon v. Raphael*, 7 Car. & P. 115;

see *Pennell v. Hume*, 3 Drew. 337; 25 L. J., Ch. 30; 1 Jur., N. S. 669.

CHAP. XV.

claiming goods
as belonging to
the bankrupt.

Extends to
actions by
bankrupt
against as-
signees.

Infant need
not give notice,
a fiat against
him being
absolutely
void.

Evidence
without notice
might have
been given that
the trader was
an uncertifi-
cated bankrupt
under a com-
mission still in
force.

rupt (*t*). It extends to actions by the bankrupt against his assignees; and the bankrupt must, in such a case, give notice of his intention to dispute the petitioning creditor's debt, trading or act of bankruptcy, even although the assignees know that the action is brought for the purpose of disputing the validity of the bankruptcy (*u*); otherwise these facts will be taken as admitted; and even though the defendants produce the proceedings, and a good petitioning creditor's debt does not thereby appear; for unless notice be given, the production of the petition for adjudication duly filed proves the debt (*x*); and where it is necessary to prove the petitioning creditor's debt, the defendant is not limited to the debt stated in the depositions (*y*); but an adjudication of bankruptcy against an infant is absolutely void; and where the infant disputes the adjudication in an action against his assignees, and they are aware that he intends to set up his infancy, it is not necessary for him to give the notice required by the statute (*z*). It extends to cases, also, where the servants of the assignees are joined with them as defendants (*a*). But it is confined to the cases specified in the section; and the commission, fiat or adjudication must under the enactment in 6 Geo. 4, c. 16, still have been put in, and its validity was open for examination; and, therefore, it was a sufficient answer to an action by assignees, to prove that the trader was an uncertificated bankrupt under a former commission still in force, and that his effects were duly assigned under the former commission against him; and this could be given in evidence without the notice required by this section (*b*). The same may still be held to be law, for though the proceedings would not now have to be produced, yet, admitting the petitioning creditor's debt, the trading and the act of bankruptcy, it is not clear that the adjudication would not on such grounds as that last mentioned be invalid; and where the assignees are strangers to the record, if their title comes incidentally in question, it must be proved by the ordinary evidence, although no notice of contesting the validity of the fiat has been given by the opposite party (*c*); but if the assignees are, in fact, parties, though they are not named as assignees on the record, and if the other party knew that the bank-

(*t*) *Newport v. Hollings*, 3 Car. & P. 223.

(*u*) *Ex parte Dick*, 1 Rose, 51.

(*x*) *Birt v. Stephenson*, *infra*.

(*y*) *M'Beath v. Cooke*, 12 Moore, 122; *Birt v. Stephenson*, 8 Car. & P. 741.

(*z*) *Belton v. Hodges*, 2 M. & Scott,

496; 9 Bing. 365; see *Bell v. Tinney*, 4 Mad. 373.

(*a*) *Gilman v. Cousins*, 2 Stark. 182.

(*b*) *Phillips v. Hopwood*, 1 B. & Adol. 619.

(*c*) *Doe v. Liston*, 4 Taunt. 741.

ruptcy would be relied on, the section applies, and he cannot dispute without notice the matters mentioned in the section (*d*).

So, in an action against the assignees for the conversion of goods, &c., which the defendants had seized under a fiat, the plaintiff opened the bankruptcy, admitting that some of the defendants were assignees of the bankrupt, and it was held, that proof of the petitioning debt was not necessary (*e*); but unless notice under this section be given to dispute the petitioning creditor's debt, the debt upon the proceedings must be taken to be admitted for all the purposes of the suit (*f*).

Unless notice given under sect. 234, petitioning creditor's debt taken as admitted.

The notice need not be personally served.

On part of defendant must be served before pleading.

The notice does not require personal service. It was held sufficient that the notice was served on the clerk of the assignee, at his counting-house (*g*). Upon the part of a defendant, it must be served either at the time of pleading, or before it; if he plead without giving the notice, he cannot afterwards, even before his time for pleading has expired, again plead with notice, until he has first obtained leave to withdraw his former plea (*h*). And where the clerk of the defendant's attorney delivered a plea of the general issue, but without notice to dispute the bankruptcy, and on the same day obtained back the plea under the pretence of correcting a mistake, and delivered another plea with the notice attached, it was held insufficient; the defendant ought to have moved to withdraw his plea (*i*). Upon the part of the plaintiff, it must be served before the issue joined; serving at the same time with the issue and notice of trial will be too late (*k*). And the court sitting at nisi prius will not enter into the question, whether the defendant's attorney has or not undertaken to accept of notice after issue joined, if the fact is disputed (*l*). When given by a defendant, it is not considered as a part of his case at the trial, but he may prove the service of it, as soon as the assignees attempt to make out a *prima facie* case, by producing the petition for the adjudication, &c. (*m*). And if a notice be given to dispute the act of bankruptcy only, and an act of bankruptcy be proved, it is not necessary to prove a co-existing petitioning creditor's debt or trading, more especially if no other act of bankruptcy appears in evi-

On part of plaintiff before issue joined.

Where notice is given to dispute act of bankruptcy, not necessary to prove trading, &c.

(*d*) *Fawcett v. Fearne*, 6 Q. B. 25, n.

(*e*) *Fawcett v. Fearne*, 8 Jur. 645.

(*f*) *Hernamann v. Barber*, 14 C. B. 583; 18 Jur. 790; 23 L. J., C. P. 145.

(*g*) *Widger v. Browning*, 2 Car. & P. 523; Mood. & M. 27.

(*h*) *Poole v. Bell*, 1 Stark. 328; *Radmore v. Gould*, 8 Wightwick, 80; *Gardner*

v. Slack, 6 Moore, 489.

(*i*) *Lawrence v. Crowder*, 3 Car. & P. 229; 2 M. & P. 511; see *Poole v. Bell*, 1 Stark. 328.

(*k*) *Richmond v. Heapy*, 4 Camp. 207.

(*l*) *Folks v. Scudder*, 3 Car. & P. 232.

(*m*) *De Charme v. Lane*, 2 Camp. 324.

CHAP. XV.

Notice must specify the part of proceedings disputed.

A party may by his pleading preclude himself from disputing matters stated in the notice.

In action by assignees against the petitioning creditor, he cannot dispute the validity of the bankruptcy.

dence (*n*). (*See the form of a notice by a defendant, of his intention to dispute the petitioning creditor's debt, &c., and the like by a plaintiff, post, Appendix.*) The notice must specify what part of the proceedings in bankruptcy the defendant intends to dispute; a notice of intention to dispute "the bankruptcy" is not sufficient (*o*). If the notice be of an intention to dispute the act of bankruptcy only, and depositions are read to prove the trading and petitioning creditor's debt, this does not put the whole file of proceedings in evidence; but if the opposite party wish to inspect other depositions, or have them read, he must call for them as part of his case (*p*).

In cases within the act, if the party has precluded himself, by his pleading or otherwise, from disputing the bankruptcy, the other party will not be obliged to give any evidence in support of it, whether a notice of an intention to dispute it has been given or not; as, for instance, where, to debt on bond by assignees, the defendant pleaded payment only, it was held that this was an admission of the assignees' right to sue, and that the only issue to try was the payment (*q*). In an action of trespass for goods, the defendants, after alleging the bankruptcy, and their appointment as assignees, justified taking the goods as belonging to them as such assignees; the plaintiff replied that the goods were not the goods of the defendants as such assignees, but were the goods of the plaintiff: it was held, that the replication, denying only that the goods in question belonged to the assignees, admitted that the assignees were entitled to the goods of the bankrupt; and, therefore, that it was unnecessary for the defendants to give any proof of the bankruptcy, or their appointment (*r*). So, in an action by the assignees against the petitioning creditor, the defendant cannot dispute the validity of the bankruptcy, on the ground of there not being a sufficient petitioning creditor's debt, although it appear that, in point of fact, upon a balance of accounts between the defendant and the bankrupt, there was not a sufficient amount due to the defendant (*s*). Where an auctioneer advertised the property of a bankrupt for sale, by the description of "the property of Derouveray, a bankrupt," Lord Kenyon held, that, in an action against him by the assignees for the produce of the sale, he was precluded from disputing the bankruptcy of Derouveray (*t*). So,

(*n*) *Porter v. Walker*, 1 Scott, N. C. 568; 1 M. & G. 686.

(*o*) *Trimley v. Uwins*, 9 Dow. & R. 548; see *Porter v. Walker*, *supra*.

(*p*) *Bluck v. Thorne*, 4 Camp. 191.

(*q*) *Crosbie v. Oliver*, 1 Stark. 76.

(*r*) *Jones v. Brown*, 1 Scott, 453; 1 Bing. N. C. 484.

(*s*) *Harmer v. Davis*, 1 Moore, 300.

(*t*) *Maltby v. Christie*, 1 Esp. 340.

if a person who has been adjudicated a bankrupt obtain his discharge out of custody by a judge's order, on the ground of his bankruptcy, he is afterwards precluded from contesting its validity (*u*). But the bankrupt is not precluded from contesting the validity of the adjudication by surrendering to it (*x*), or by the mere formal words of a petition presented by him for enlarging the time for his surrender, stating that he had been duly declared a bankrupt (*y*); nor is a creditor precluded from doing so, by having proved under the bankruptcy (*z*). If a person treat assignees as such, in the course of transactions between him and them relative to the bankrupt's estate,—as, for instance, if a debtor to the bankrupt pay the assignees a part of the debt owing by him—he does not, indeed, thereby estop himself from afterwards disputing the bankruptcy, in an action between him and the assignees, but the fact will be *primâ facie* evidence of the assignees' title, of which they need give no other evidence, and will throw the onus of impugning the bankruptcy upon the party in question (*a*). In the same manner, letters written by the defendant to the solicitor to the bankruptcy, and to one of the assignees, are *primâ facie* evidence of the title of the assignees, although there is a plea denying the plaintiffs' title as assignees, and notice to dispute has been given (*b*).

Bankrupt not precluded from disputing the bankruptcy by surrendering to it or describing himself in a petition for time as a bankrupt: nor is a creditor by proving.

Treating assignees as such, writing letters to them, &c., *primâ facie* evidence of their title, shifting onus of proof.

And if, in an action of trover by the assignees, the defendant's attorney undertakes to admit that the party "duly became bankrupt," and no notice is given to dispute the fiat, the admission is conclusive of the bankruptcy, and the defendant cannot call for the proceedings, to show from them that there was no act of bankruptcy (*c*).

When the action was by the assignee, and the defendant gave notice to dispute the petitioning creditor's debt, trading and act of bankruptcy, but at the trial the cause was referred, the defendant undertaking to admit the bankruptcy, it was held that the judge had no power to certify, as the cause was not tried (*d*).

By 12 & 13 Vict. c. 106, s. 235, in all suits in equity, other than a suit brought by the assignees for any debt or demand for which the bankrupt might have sustained a suit in equity had he not been adjudged bankrupt, and whether at the suit of or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt, or of the trading or act of bankruptcy

By sect. 235 of the Act of 1849, a notice is to be given in suits in equity similar to that required in actions at law by sect. 234.

(*u*) *Goldie v. Gunston*, 4 Camp. 381.

(*x*) *Mercer v. Wise*, 3 Esp. 219.

(*y*) *Ibid.*

(*z*) *Rankin v. Horner*, 16 East, 191;
Stewart v. Richman, 1 Esp. 108.

(*a*) *Dickinson v. Coward*, 1 B. & Al. 677.

(*b*) *Inglis v. Spence*, 1 C., M. & R. 432.

(*c*) *Perring v. Tucker*, 3 M. & P. 557.

(*d*) *Barthrop v. Anderson*, 6 M. & P. 361.

CHAP. XV.

Notice to dispute to be given to the assignees within ten days after rejoinder.

Since re-joinders abolished ten days run from date when cause at issue.

Infant defendants allowed to dispute requisites, though no notice given.

Denial of the validity of the bankruptcy in a defendant's

respectively, as against any of the parties in such suit, except such parties as shall within ten days after rejoinder give notice in writing to the assignees of their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice shall, if the court see fit, be paid by the parties giving such notice, and the service of such notice may be proved by affidavit upon the hearing of the cause.

As rejoinder has since been abolished in equity, it has been held that the time from which the ten days shall run is the time the cause is at issue (*e*). But in one case, eight weeks after replication, the court allowed ten days further to the defendants to give the notice which they had neglected to give (*f*). It has been held that, under the analogous section in the act 6 Geo. 4, c. 16, infant defendants were not precluded from disputing the requisites for a valid adjudication by having neglected to give notice to dispute, and an inquiry was directed (*g*). This decision seems to have been grounded on the principle that such omission of notice to dispute was to be considered as equivalent to an admission by consent, and as infants could not be bound by such admission, neither should they be so by its equivalent; and there is something to be said for such a view, if it be not held a stretch of authority in the court to overrule the express words of the statute on such a construction. It is to be remarked that the words of the enactment of the statute of 1849 are, that no proof shall be required of the petitioning creditor's debt, &c., while under the statute 6 Geo. 4, it was enacted that the commission and the proceeding of the commissioners should be evidence to be received of the petitioning creditor's debt, &c., so that under the older statute the court might allow what weight it pleased to the evidence, and might therefore require that it should be confirmed, in the latter it is forbidden to require any evidence of the same matters. It was, however, held even under the former enactment that the validity of the commission could not be disputed without such notice, even where the invalidity appeared by matter on the face of the proceedings (*h*). Notice by the answer to a bill filed by the assignees of a bankrupt, that the defendant denies the validity of the bankruptcy, is not sufficient notice to enable him to dispute the bankruptcy at

(*e*) *Pennell v. Home*, 3 Drew. 337; 25 L. J., Ch. 30.

(*f*) *Lee v. Donnistoun*, 29 Beav. 465.

(*g*) *Bell v. Tinney*, 4 Mad. 373; see *Belton v. Hodges*, 2 M. & Sc. 496; 9

Bing. 365.

(*h*) *Bevan v. Lewis*, 1 Sim. 376; 2 G. & J. 245; see *Birt v. Stephenson*, 8 Car. & P. 741.

the hearing. The notice required by this section must be in writing, and must set forth specifically which of the requisites it is intended to dispute, and must be given within ten days after the cause is at issue (*i*).

answer to bill by assignees, not sufficient notice.

It is presumed that the same rules as to admission of the title of the assignees, made on the pleadings or by matter in pais, which would bind a party or be evidence against him in proceedings at law, would be held to bind or be evidence against him in a suit in equity also.

Subject to the limitations introduced by the rules of pleading and by the enactments above mentioned, the same rules of pleading and evidence apply in the case of actions by or against assignees in bankruptcy, as by or against other persons. So, where the title of the assignees is in issue in actions by them, they must first prove their own title to sue; that is to say, they must prove the petitioning creditor's debt, the trading, the act of bankruptcy, and also the filing of the petition for adjudication and their appointment; and they must then prove the cause of action. Where the defendant, to an action of trover, by the assignee, pleads that plaintiffs are not assignees, and are not possessed as assignees, this puts in issue the trading, the petitioning creditor's debt and act of bankruptcy (*k*); but the defendant, under such plea, cannot give in evidence the protection afforded by statute 2 & 3 Vict. c. 106, s. 133, as to contracts, &c. with bankrupts before the filing of the petition for adjudication and without notice (*l*). So, in an action of trover against assignees on a plea of not possessed, evidence may be given by the assignees of the reputed ownership of the bankrupt to rebut the *prima facie* right to possession by the true owner (*m*). And where, in such an action, the "order and disposition" is in issue, declarations of the bankrupt made in the absence of the plaintiff, and before the bankruptcy, as to the goods in question, to show an exercise or reputation of ownership over the goods, is admissible in evidence on behalf of the assignees (*n*). In an action of assumpsit by assignees, for non-acceptance of shares in a public company, which the defendant had contracted to purchase of the bankrupt, the certificate of the shares without an indorsement of

Where assignees' title is in issue in actions by them, they must prove it.

Plea, in action of trover, that plaintiffs not assignees, puts in issue trading, &c.

But defendant cannot, under such plea, rely on 2 & 3 Vict. c. 106, s. 133.

What evidence admissible in actions by and against assignees.

(*i*) *Pennell v. Home*, 1 Jur., N. S. 669; 3 Drew. 337; see *Moon v. Raphael*, 7 C. & P. 115.

(*k*) *Butler v. Hobson*, 5 Sc. 798; 6 Dowl. 409; 4 Bing. N. C. 290; *Buckton*

v. Frost, 8 Ad. & El. 844; 1 Per. & D. 102.

(*l*) *Byers v. Southwell*, 9 Car. & P. 320.

(*m*) *Isaac v. Belcher*, 5 M. & W. 139.

(*n*) *Sharp v. Newsholme*, 8 Scott, 21.

CHAP. XV.

Rules of evidence in suits, &c., by and against assignees.

To prove legal requisites, ordinary evidence necessary.

Admissions by bankrupt evidence of petitioning creditor's debt.

But declaration, &c., of bankrupt after bankruptcy, not admissible.

transfer to the assignees, was held not sufficient evidence of plaintiff's title (*o*).

So, witnesses examined in an original cause after the bankruptcy of a defendant, and before the supplemental suit, to which only the assignees were parties, was at issue, cannot be read against assignees (*p*). So, the assignees under a joint bankruptcy cannot recover, if it turn out that one of the bankrupts has not in fact committed an act of bankruptcy (*q*).

So, where the requisites to a valid adjudication are to be proved, they must be proved by the ordinary evidence (*r*).

All admissions by the bankrupt, previously to filing of the petition for the adjudication (*s*), entries in his books, posted by himself before the bankruptcy (*t*), and the like, are evidence of the petitioning creditor's debt. So, his promissory notes to the petitioning creditor, bearing date before the bankruptcy, are *prima facie* evidence of it (*u*). But no declaration or letter of the bankrupt, after the bankruptcy, is admissible as evidence of the petitioning creditor's debt (*x*): nor will even an account down to a time before the bankruptcy, signed by the bankrupt, be received as evidence of it, unless it be also proved to have been signed by the bankrupt before the bankruptcy (*y*). But in an action against the assignees, documents in the handwriting of the bankrupt, and dated prior to the bankruptcy, were held admissible in evidence, as existing at the time they bore date, although there was no other evidence of that fact independently of the documents themselves, it being a question for the jury whether the dates were false or true (*z*). So a written statement by the bankrupt before his bankruptcy, of his debts and credits, is evidence that he knew of his insolvency, if it appears thereby (*a*). If the defendant has been examined before the commissioner, although perhaps improperly, upon a subject unconnected with the bankrupt's estate, his examination may be read against him at the trial (*b*). In an action by a bankrupt against the petitioning creditor, to try the validity of the commission, proof that the bankrupt and the petitioning creditor attended the second meeting of

(*o*) *Hare v. Waring*, 3 M. & W. 362.

(*p*) *Hitchens v. Congreve*, Mon. 225; 4 Sim. 420.

(*q*) *Hogg v. Bridges*, 2 Moore, 122; 8 Taunt. 200.

(*r*) Buller's N. P. 37.

(*s*) *Downton v. Cross*, 1 Esp. 168; and see *Hoare v. Coryton*, 4 Taunt. 560.

(*t*) *Watts v. Thorpe*, 1 Camp. 376; and

see *Ewer v. Preston*, Hardw. 378.

(*u*) *Taylor v. Kinloch*, 1 Stark. 177.

(*x*) *Ib.*

(*y*) *Hoare v. Coryton*, 4 Taunt. 560.

(*z*) *Morgan v. Whitmore*, 6 Exch. 716.

(*a*) *Scott v. Thomas*, 6 Car. & P. 611.

(*b*) *Stockfleth v. De Tastet*, 4 Camp. 10; *Milward v. Forbes*, 4 Esp. 172; see *Deady v. Harrison*, 1 Stark. 60.

the commissioners, discussed before them the debt due to the petitioning creditor, and produced their accounts, and that the bankrupt objected to part of the petitioning creditor's account, and the commissioners ticked off such items in it as they allowed, and struck a balance of 169*l.* as due to the petitioning creditor, was held evidence to be left to the jury of an implied admission by the bankrupt, from his conduct and demeanour before the commissioners, that such a balance was due (*c*).

So, secondary evidence will not be admitted of a debt by specialty or on a written contract, unless on the usual terms of accounting for the loss of the original (*d*). So, where the petitioning creditor's debt is on a bill drawn by the bankrupt, notice of dishonour must be proved (*e*). The admission of the petitioning creditor as to the nature of the claim upon which he sued out the commission, has also been held admissible evidence for the purpose of invalidating the commission in a collateral action (*e*). If the debt be proved to have once existed, it will, until the contrary be proved (*f*), be presumed to have continued due and owing up to the filing of the petition of adjudication, unless there appear to have been subsequent receipts and payments, the result of which cannot be proved (*g*). It must be proved, however, to have existed before the act of bankruptcy; that fact will not be presumed (*ante*, pp. 190, 191) (*h*). Also, if the petitioning creditor's debt were due to him as the assignee of another bankrupt, it is necessary to prove his title as assignee, by proving the petitioning creditor's debt, the trading, act of bankruptcy, petition for adjudication and appointment of assignee, under which he claims (*i*); and they must be proved by the ordinary evidence; merely producing the proceedings under the petition for adjudication is not sufficient (*k*). A debtor to the bankrupt, when sued by his assignee, cannot set up the Statute of Limitations as an objection to the petitioning creditor's debt (*l*); *semble*, that an order of the court, substituting a new petitioning creditor's debt, cannot be used to the prejudice of a party to an action then pending, in which he seeks to impeach

Rules of evidence in suits, &c., by and against assignees.

(*c*) *Jarrett v. Leonard*, 2 M. & S. 265.

(*d*) *Abbot v. Plumbe*, 1 Doug. 216; see also *Antram v. Chace*, 15 East, 209; *Bowles v. Langworthy*, 5 T. R. 366; *Pooley v. Millard*, 1 C. & J. 411; *Goss v. Tracy*, 1 P. Wms. 289; *Bernett v. Taylor*, 9 Ves. 381; *Kay v. Stead*, 2 Stark. 200.

(*e*) *Cooper v. Machin*, 1 Bing. 426; see *Tucker v. Jones*, 2 Bing. 2.

(*f*) *Young v. Smith*, 6 Esp. 121; *Dowden v. Fowle*, 4 Camp. 38.

(*g*) *Jackson v. Irvin*, 2 Camp. 48;

Ewer v. Preston, Hardw. 378.

(*g*) *Gresly v. Price*, 2 Car. & P. 48.

(*h*) See *Cooper v. Machin*, 1 Bing. 428.

(*i*) *Doe v. Liston*, 4 Taunt. 741; see *Skaipe v. Howard*, 2 B. & C. 560.

(*k*) See *Muskett v. Drummond*, 10 B. & C. 153.

(*l*) *Mavor v. Pyne*, 2 Car. & P. 91; 11 Moore, 2; 3 Bing. 285; *Quantoock v. England*, 5 Bur. 2628; 2 W. Bl. 703; *Swayne v. Wallinger*, 2 Str. 746; *Bickerdike v. Bollman*, 1 T. R. 407.

CHAP. XV.

Substitution
of one peti-
tioning credi-
tor's debt for
another how
proved.

Trading how
proved.

Act of bank-
ruptcy by
lying in prison
how proved.

the validity of the party on the ground of the insufficiency of the petitioning creditor's debt (*m*).

To prove such substitution of debt it is sufficient to prove the order to substitute under the seal of the court.

The trading must be proved by some person who can swear to the fact from his own knowledge. In an action by a bankrupt, to try the validity of his commission, his admission that he was in partnership with one who was a trader, and his being proved to have given directions in the concern, was deemed sufficient evidence of the trading, although no act of buying and selling, during the time of the partnership, was established in evidence (*n*).

So, where the act of bankruptcy relied on was lying in prison in the custody of the marshal, it was held that the *committitur* must be produced; for the prison books, although evidence of the time of the commitment and discharge, are no evidence of the cause of the commitment (*o*).

All this, however, more properly belongs to the law of evidence than of bankruptcy.

As to evidence of intent in acts of bankruptcy, see *ante*, Chap. III.

By section 155 of the Act of 1849, judgment recovered by assignees in respect of a liability to the bankrupt or to the assignees as such will discharge the defendant against any subsequent action by the bankrupt himself or those claiming under him for the same cause of action, even though the bankruptcy be annulled, and all persons who, without action or suit, *bonâ fide* deliver up possession of any estate to the assignees or pay any debt claimed by them are discharged from the claim of the alleged bankrupt or any person claiming under him in respect of such estate or debt, provided the person delivering the possession or paying the debt shall not have had notice of any action, suit or other proceeding to dispute or annul the adjudication, and such action, suit or proceeding shall not have been commenced and duly prosecuted within the proper time allowed by the act.

The official assignee is, till the creditors' assignee be chosen, the sole assignee of the bankrupt's estate (*p*). All the bankrupt's property vests in him, and theoretically he represents the bankrupt as to his property for all purposes; but he should not interfere actively except for the purpose of preserving the estate until the creditors shall have had an opportunity of choosing a creditors' assignee. By section 108 of the Act of 1861, immediately on

(*m*) *Aireton v. Davis*, 3 M. & Scott, 138.

(*n*) *Parker v. Barker*, 1 Br. & Bing. 9; 3 Moore, 226.

(*o*) *Salt v. Thomas*, 3 B. & P. 188.

(*p*) Act of 1861, s. 229; Act of 1849, s. 40.

Official assign-
nee solely
entitled till
creditors' as-
signee chosen;
but his active
interference
should be
limited to pre-
serving the
estate.

adjudication, it shall be the duty of the official assignee to take possession of the bankrupt's estate, and to retain possession thereof until the appointment of a creditors' assignee; but if such official assignee, or if the court, upon the representation of any creditor, shall be of opinion that the keeping possession of the bankrupt's property is not requisite for the due protection of the creditors, such possession shall not be continued.

By section 40 of the Act of 1849, before mentioned, the official assignee is, under the order of the court, to sell any property of the bankrupt which is of a perishable nature, or which the court shall think will be prejudiced by the sale being delayed till the choice of assignees; and it is his duty to bring to the notice of the court any facts which might be of importance in enabling the court to form an opinion upon the nature of the property for the purpose of such order. At any time after the expiration of twelve months from adjudication, or at any earlier period with the approbation of the court, the assignees may sell by auction or tender, or, with the sanction of the court, by private contract, all or any of the book debts due or growing due to the bankrupt, and the books relating thereto, and the goodwill of his trade or business, and assign the same to the purchaser; and such purchaser shall, by virtue of the assignment, have power to sue in his own name for the debts assigned to him, as effectually, and with the same privileges concerning proof of the requisites of bankruptcy and other matters, as the assignee himself.

Property of a perishable nature, &c., to be sold by official assignee.

Sale of book debts, &c.

Book debts are defined to be such debts accruing in the ordinary course of business as are usually entered in a tradesman's books (*q*). The proprietor of newspapers sold the copyright in one of them to a purchaser who was to pay for it by instalments; the debt upon the unpaid instalments was held a book debt (*r*). But a bill of exchange cannot be held such (*s*).

Book debts, what.

The power of the assignees under this section does not apply to cases of attorneys or other persons in close fiduciary relations to the persons with whom their business lies (*t*).

The books of a bankrupt ought not to be sold while his order of discharge is withheld (*u*).

It is to be remembered that by the 229th section of the Act of 1861 "assignee" is defined to mean "creditors' assignee" when

(*q*) *Shipley v. Marshall*, 14 C. B., N. S. 566; 32 L. J., C. P. 258; 9 Jur., N. S. 1060; *M'Evoy v. Bent*, 11 W. R. 314.
(*r*) *Shipley v. Marshall*, supra.

(*s*) *M'Evoy v. Bent*, supra.
(*t*) *Re Holden*, 12 W. R. 183.
(*u*) MS. note per L. C., Jan. 13th, 1864.

CHAP. XV.

chosen, and until such assignee be chosen or where no such assignee exists, then "official assignee."

Notice of any sale under this section by auction or tender, when made in a county court bankruptcy, shall be given in one local newspaper seven clear days before the sale shall be held: County Court Order, 1st July, 1863, r. 45.

By section 138 of the Act of 1861, when the affairs of the bankrupt are fully wound up, the court may, subject to the directions of any general order, make from time to time such orders as in each case seem fit respecting the disposal or custody of any books, papers or documents relating to property or affairs in the possession or under the control of the official assignee, the creditors' assignee, or any other person.

On the appointment of the creditors' assignees the property vests, as has before been mentioned, in them, and is divested out of the official assignee; but the assignees, whether creditors' or official, so long as the property of the bankrupt is vested in them, hold it with all the rights as against third parties, and subject to all the equities, with and subject to which the bankrupt himself held it (x).

The creditors' assignees, as soon as they are chosen, or the majority of them (y), appoint the solicitor, either the solicitor who filed the petition for adjudication or another, who is thenceforth to conduct the proceedings under the bankruptcy; and their signatures should be affixed to their retainer of solicitors upon the proceedings (z). They may remove the solicitor they have thus appointed; but where they have appointed a solicitor who acts in the prosecution of the bankruptcy, he cannot be removed but by leave of the court, and in general only on payment of his costs up to removal (a). The court cannot, however, compel creditors' assignees to sign an order for payment out of the assets of a solicitor's bill of costs, incurred in the matters of the bankruptcy, nor attach them for refusing so to do; but it has, notwithstanding their refusal, ordered the accountant in bankruptcy to pay without their signature (z). And where the creditors' assignee refused to sign the order for payment of the costs of the bankrupt's solicitor in presenting his petition and prosecuting the bankruptcy to the choice of assignees, the court dispensed with such signature upon

Where affairs of bankrupt wound up, court to make order as to custody of books, &c.

Assignees hold the estate with and subject to such rights and equities as bankrupt.

The creditors' assignees or the majority of them appoint the solicitor; and may remove him; but, if he has acted, only with leave of court and on payment of his costs.

Court cannot compel them to sign order for payment;

but will order accountant in bankruptcy to pay without their signature or on that of official assignee.

(x) See ante, Property passing to Assignees; and *Dodson v. Lockhart*, 5 T. R. 133; *Harrison v. Walker*, 1 Peake, 150; *Tyrrell v. Hope*, 2 Atk. 558; *Ex parte*

Mowbray, 1 Jac. & W. 428.

(y) *Ex parte Tomlinson*, 2 Rose, 66.

(z) *Ex parte Parker*, 10 L. T., N. S. 915.

(a) *Re Davison*, 13 W. R. 846.

CHAP. XV.

the order being signed by the official assignee (*b*). The court will only recognize the solicitors who appear on the proceedings as solicitors in the bankruptcy (*c*). Formerly, where the solicitor had the custody of the proceedings, he was, upon being removed, obliged to give them up to the assignees (*d*), or to another solicitor appointed by them, or in case of the death of an assignee to the surviving assignee; and without waiting for the appointment of an assignee in the room of the one deceased (*e*), even although his bill had not been paid (*f*); and if the solicitor refused to deliver up the proceedings to the order of the assignees (*g*), or of a majority of the assignees, the order to compel him so to do with costs was of course, except in a case of gross misconduct on the part of the assignees, and a cross petition for their removal (*h*): and where charges of fraud were brought against the solicitor to the bankruptcy which were not satisfactorily answered, the court, on the petition of one assignee, ordered the solicitor to deliver up the proceedings, although the other assignee did not consent to a change of the solicitor (*i*).

Court will only recognize as solicitors of the bankruptcy those appearing on proceedings.

On a change of solicitors it seems that, before the Act of 1861, the former solicitor would have been entitled to retain, until his costs were paid, the documents in his possession referring to the bankruptcy, other than the *proceedings*, which are not now left in his custody at all (*k*); always supposing, that is, that he had not in fact compelled his own discharge by his misconduct or voluntarily discharged himself, and the court even if it ordered him to give up the books and documents would make provision for his costs in the order, or direct the books, &c. to be restored to him after the production, if it thought that that would be an efficient security, for the assignees would have no greater right against their solicitor than any other client against his (*l*). By the Act of 1861, sect. 121, no person shall be entitled, as against the official or creditors' assignee, to withhold possession of the books of account of the bankrupt, or to claim any lien thereon.

Before the Act of 1861 the former solicitor entitled to retain documents, other than the proceedings, until his costs paid.

Now, under sect. 121 of the Act of 1861, no one entitled as against assignees to withhold books of bankrupt or to claim lien thereon.

Under this clause the solicitor or attorney is bound to give up the

(*b*) *Ex parte Cole, re Wheatley*, 13 L. T., N. S. 615. See also *Ex parte Parsons*, De G. 342.

(*c*) *Ex parte Parker*, 10 L. T., N. S. 915.

(*d*) *Ex parte Hardy*, 1 Rose, 395.

(*e*) *Ex parte Ackroyd*, 3 Dea. & C. 21.

(*f*) See *Ex parte Shaw*, 1 Glyn & J. 124.

(*g*) *Ex parte Crowe*, Mon. & B. 90.

(*h*) *Ex parte Holford*, 4 Dea. & C. 271; 2 Mon. & A. 52.

(*i*) *Ex parte Randall*, 1 M., D. & D. 562.

(*k*) See Orders of 19th Oct. 1852, Rule 42.

(*l*) *Ex parte Underwood*, De G. 190; 9 Jur. 632; *Ex parte Hawley*, Fonbl. 243; Stokes on Lien of Attornies and Solicitors, 16.

CHAP. XV.

Solicitor must
surrender
books, without
stipulations.

books to the assignees without any terms made, or stipulation for their return, and so, in losing his lien against the assignees, loses it absolutely in many cases against every one, for if the books came again into his hands, it is more than doubtful whether he could claim to retain them in respect of the old lien; for, in the first place, they are no longer the books of the bankrupt, and so could not be retained for his debt, and there is, as we have seen, by reason of this clause, (sect. 121,) no lien against the assignees.

By 12 & 13 Vict. c. 106, s. 40, nothing in such act contained shall extend to authorize any official assignee to interfere with the assignees chosen by the creditors, in the appointment or removal of a solicitor or attorney, or, after such choice, in directing the time or manner of effecting any sale of the bankrupt's estate or effects; but where a trader, petitioning for arrangement, was declared bankrupt under 12 & 13 Vict. c. 106, s. 223, now repealed, the official assignee, by order of the commissioner, could appoint a solicitor to act in the matter until the choice of the creditors' assignees (*h*).

Where prisoner
adjudicated
bankrupt under
sect. 101 of
the Act of
1861, Chan-
cellor has the
appointment of
the solicitor, if
no assignees
chosen at first
meeting.

Court may
order assignees
to change
solicitor, if im-
proper person
appointed by
them.

If no creditors' assignee be appointed at the first meeting of creditors, upon an adjudication pronounced by the registrar against a prisoner under the 101st section of the Act of 1861, the Chancellor may appoint a solicitor to the estate under the General Order of October, 1861, rule 31, and a solicitor has been appointed to act in all such cases.

In the case of the assignees appointing an improper person as solicitor, the court, it would seem, has a supervising power, and may order them to change their solicitor; and if they refuse may remove them from office, if, that is to say, the 139th sect. of the Act of 1849 be not virtually repealed, as to which see *ante*. In such a case the Court of Appeal distinctly refused to interfere (*i*). The assignees ought not to appoint a person standing in a suspicious degree of relationship either with the bankrupt (*i*), or with themselves, or one of them; thus they have no right to appoint the partner of one of them who is a solicitor or attorney (*k*); and if one of them, being himself an attorney or solicitor, act as solicitor in the bankruptcy he will not be entitled to any costs save those out of pocket, with perhaps an allowance for his clerk's time actually expended in the matter of the bankruptcy (*l*).

(*h*) *Ex parte Smith*, 4 De G. & S. 287.

(*i*) *Ex parte Bates*, 1 De G., M. & G. 452; 21 L. J., Bcy. 20; 16 Jur. 459.

(*k*) *Ex parte Downes*, De G. 390.

(*l*) *Ex parte Chamberlayne*, 4 De G. & S. 17; 14 Jur. 997; *Ex parte Newton*, 3 De G. & S. 584.

CHAP. XV.

As the election of more than one assignee is for the protection of the creditors, if more than one is elected they cannot act separately, and one of them has no right to give the other a general authority to act for him; at least it has been held that a general authority will not sanction the assignee, so purporting to be authorized, to execute a release for all the assignees (*m*), nor to do any act binding the creditors generally (*n*), but one assignee may depute another to act for him in a particular case in a particular way, for here is no delegation of discretion but merely a particular form of action (*o*); so it seems implied in one of the cases just referred to (*p*), that the execution of a deed by one assignee in the presence of and with the assent of another, for both of them, would be a valid execution so as to bind that other and the creditors, and it seems that it ought to be so in equity, though difficulties might arise at law in the absence of a power duly executed under seal, authorizing the execution of a deed in the name of the person granting the power. As the creditors' assignees are joint tenants the receipt by one of money, &c., in the name of all is a receipt by all (*q*), unless the others have expressly dissented (*r*), and such receipt will discharge the person paying or transferring the money, &c.

One of several assignees cannot act separately, nor can one give another a general authority to act for him.

But the receipt of money by one, good for all.

In matters of purely joint discretion the judgment of the majority of the assignees ought properly to govern the minority, and the court will be slow to overrule the majority at the instance of the dissentients (*s*); but if the matter is of importance to the bankrupt's estate, the court has a power of supervision and of deciding between them, and may affirm the wish of the minority, even, it would seem, against the majority.

In matters of joint discretion majority govern minority.

The authority of the creditors' assignees with respect to the assets, though so very wide, as long as there are creditors unpaid under the bankruptcy, is strictly limited by the purpose of their trust, *i. e.*, the distribution of the estate under the bankrupt laws, and they have no authority to enter into an agreement for the disposal of the surplus after payment of a composition to the creditors (*t*).

Assignees cannot dispose of surplus assets;

The assignees may at any time be called on by the court to produce all books, papers, deeds, writings and other documents relating to the bankruptcy in their possession, and to pay and deliver over to

may be required by court to produce papers, &c.

(*m*) *Harrison v. Jackson*, 7 T. R. 207;
Williams v. Walsby, 4 Esp. 220.
 (*n*) *Douglas v. Browne*, Mon. 93.
 (*o*) See cases ante (*m*) and (*n*).
 (*p*) *Williams v. Walsby*, supra.

(*q*) *Smith v. Jameson*, 1 Esp. 114.
 (*r*) *Bristow v. Eastman*, 1 Esp. 172.
 (*s*) *Ex parte Tomlinson*, 2 Rose, 66.
 (*t*) *Ex parte Barfit*, 12 Ves. 15

CHAP. XV.

the official assignee all monies, books, papers, deeds, writings and other documents which may have come to their possession or custody as such assignees (u).

May not divide assets, except as dividend.

The assignees have no right to divide the assets among the creditors, except under a regular order for dividend, and if they do so they remain liable for the sums so divided (x).

By the Act of 1849, sect. 191, unclaimed dividends and surplus assets to be carried to "unclaimed dividend account," subject to order of Lord Chancellor, &c.

By stat. 12 & 13 Vict. c. 106, s. 191, all unclaimed dividends, and also any undivided surplus of a bankrupt's estate over and above the amount finally directed to be divided amongst the creditors of any bankrupt, shall be paid into the Bank of England to the credit of the accountant in bankruptcy, to be carried to the account intituled "The Unclaimed Dividend Account," subject to the order of the Lord Chancellor, or of the Lords Justices of the Court of Appeal in Chancery, or of any court acting in prosecution of any bankruptcy, for the payment thereof of any dividend due to any creditor.

By the Act of 1861, sect. 184, unclaimed dividends and surplus assets, after twelve months, to be carried to like account, if such dividends declared after passing of Act of 1861.

By section 184 of the Act of 1861, all unclaimed dividends, save dividends declared before the passing of that act, and all monies unclaimed, the produce of any bankrupt's estate, shall, after the expiration of the period of twelve months from the dividend having been declared, or from the time at which any other monies unclaimed shall have come to the hands of the assignee, be transferred to the credit of "The Unclaimed Dividend Account," subject to the order of the court for the payment thereof of any dividend due to any creditor, or for the distribution of any such other unclaimed money; and the interest and profit arising from the said account shall from time to time be paid over to the account of the chief registrar.

And by stat. 12 & 13 Vict. c. 106, s. 192, subject to any rule at any time in force under that act relating to unclaimed dividends, if any assignee under any bankruptcy shall have, either in his own hands, or at any bankers, or otherwise subject to his order or disposition, or shall know that there is or are in the hands or subject to the order and disposition of himself and any co-assignee or co-assignees, or of any or either of them, any unclaimed dividend or dividends, or any such undivided surplus as aforesaid, such assignee shall, as to any such then existing unclaimed dividend or dividends, within one year after the passing of that act, and as to any future dividend or dividends within three calendar months next after the expiration of one year from the time of the declaration and order

(u) Act of 1849, sect. 151.

(x) *Ex parte Lomas*, 3 D. & Ch. 681;

Ex parte Grimwood, 1 Dea. 394; 3 Mon. & A. 285, 685.

of payment of such future dividend or dividends, either pay the same to the creditor or creditors or other the person or persons entitled to the same respectively, or cause a certificate thereof respectively to be filed in the office of the Chief Registrar of the Court of Bankruptcy (*y*), containing a full and true account of the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are respectively due, and of the amount of such dividend or dividends respectively, and shall in like manner, as to any such then existing undivided surplus as aforesaid within one year after the passing of that act, and as to any such future undivided surplus as aforesaid within three calendar months next after the expiration of one year after the final declaration of dividends, cause a certificate, stating the full and true amount of such surplus, to be filed in the office of the Chief Registrar of the Court of Bankruptcy (*y*), and every certificate to be filed as aforesaid shall be signed by the assignee or assignees filing the same; and every assignee shall, within one year next after the filing of any such certificate as aforesaid, pay or cause to be paid into the Bank of England to the name of the accountant in bankruptcy, to be carried to the account intituled "The Unclaimed Dividend Account," the full amount of the unclaimed dividends mentioned in such certificate, or so much thereof as shall not have been then paid to the creditor or creditors or other person or persons entitled thereto, and also the full amount of such undivided surplus as aforesaid; and every official assignee shall cause a certificate to be filed of all unclaimed dividends and undivided surplus belonging to any bankrupt's estate under his care and management, in such manner and subject to such provisions as above prescribed with respect to unclaimed dividends and undivided surplus, and as if the official assignee had such dividends or undivided surplus in his own hands: provided always, that no certificate of any unclaimed dividends shall be filed until the expiration of one year after the declaration and order for payment of such dividends.

By 12 & 13 Vict. c. 106, s. 193, the accountant in bankruptcy shall, on the application of any assignee, give to him a certificate stating the amount of any sum of money which he may be desirous of paying into the Bank of England under the provisions hereinbefore contained, and on the production of such last-mentioned certificate the governor and company of the Bank of England shall receive the sum therein mentioned, and give a receipt for the

(*y*) 15 & 16 Vict. c. 77, s. 5.

CHAP. XV.

Court now, under Act of 1861, has no jurisdiction to order any payment to assignees from unclaimed dividends, or the interest thereon; but may order payment of unclaimed dividends to creditors, who come in and claim.

same, and shall forthwith carry the same to the credit of the accountant in bankruptcy to the account intituled "The Unclaimed Dividend Account;" and every such certificate and receipt shall be given without fee or reward.

The court therefore has no jurisdiction to order any payment to the assignees out of unclaimed dividends or out of the interest thereon (*z*); not even under a bankruptcy which occurred under the law before its alteration in England by stat. 5 & 6 Will. 4, c. 29, s. 5; in Ireland by 20 & 21 Vict. c. 60; and that, notwithstanding that the 295th section of the Irish Act, directing the payment into the bank to the credit of the unclaimed dividend account, contains an exception of dividends declared before the passing of the act (*a*): but the court may under the Act of 1849, section 191, or under that of 1861, section 184, order payment of unclaimed dividends to any creditor who may come in and claim (*b*).

By 12 & 13 Vict. c. 106, s. 262, if it shall at any time be made to appear to the court that any assignee under any fiat issued on or at any time prior to the eleventh day of November, one thousand eight hundred and forty-two, has either in his own hands or in the hands of any attorney or at any bankers', or otherwise subject to his order or disposition, or knows that there is or are in the hands or subject to the order and disposition of himself or any co-assignee, any unclaimed dividends or any undivided surplus, and that such assignee has not caused a certificate thereof to be filed as in this act above required, containing a full and true account of the names of the creditors to whom such unclaimed dividends are due, and of the amount of such dividends, and, as to any undivided surplus, caused a certificate stating the full and true amount of such surplus to be filed, and has not, as in this act above required, paid over to the account intituled "The Unclaimed Dividend Account" the amount of such unclaimed dividends, or so much thereof as shall not have been paid to the creditors or other persons entitled thereto, and also the amount of such undivided surplus, every such assignee shall be charged, in account with the estate of the bankrupt, with interest upon the amount of such unclaimed dividends or undivided surplus at the rate of five pounds per centum per annum, to be computed from the time at which such certificate is required to be filed, for such time as he shall thenceforth, either solely or together with

Assignees chargeable with interest on unclaimed surplus or dividends, unless certificate filed as required,

(*z*) *Ex parte Gregg*, 3 Dea. 308; 3 Mon. & A. 622.

(*a*) *Ex parte Willis, re French*, 9 Ir. Ch. 1.

(*b*) *In re Pocklington*, 1 Dea. 335; 2 Mon. & A. 729; *Ex parte Bremidge*, 2 Mon. & A. 732; *Ex parte Bell*, 1 Dea. 594; 2 Mon. & A. 733.

any co-assignee or other person, retain such dividends or undivided surplus, as the case may be, and also with such further sum as the court shall direct, not exceeding in the whole at the rate of twenty pounds per centum per annum to be computed from the time aforesaid; and it shall be lawful for the court to order that such sum or sums be forthwith paid into the Bank of England to the credit of the accountant in bankruptcy to the account intituled "The Unclaimed Dividend Account," and also to make such order as to costs as the justice of the case shall seem to require; and by s. 263, the neglect of any official assignee to file a certificate as required by that act of all unclaimed dividends and undivided surplus belonging to any bankrupt's estate under his care and management shall be subject to the provisions thereinbefore contained with respect to the unclaimed dividends and undivided surplus therein mentioned, and as if such official assignee had such dividends and undivided surplus in his own hands.

By 12 & 13 Vict. c. 106, s. 263, the neglect of any official assignee to file a certificate as required by that act of all unclaimed dividends and undivided surplus belonging to any bankrupt's estate under his care and management shall be subject to the provisions thereinbefore contained with respect to the unclaimed dividends and undivided surplus therein mentioned, and as if such official assignee had such dividends and undivided surplus in his own hands; and by sect. 264, such last-mentioned unclaimed dividends and undivided surplus, and any penalty payable by any official assignee in respect thereof, shall be paid into the Bank of England, or carried to the credit of the accountant in bankruptcy to the said account, intituled "The Unclaimed Dividend Account."

By section 181 of the Act of 1861, every creditors' assignee shall, before his discharge, transmit to the official assignee a list of unclaimed dividends on the estate, and of all debts remaining due to the estate, under his hand, and shall pay all monies and other estate of the bankrupt then in his hands into the Bank of England, to the account of the accountant in bankruptcy, to the credit of the estate.

It was under the former law held that the official and sole assignee can file a bill against the personal representatives of a deceased assignee for an account of unclaimed dividends, and that the non-claiming creditors need not have been parties to the suit (c).

and amount
paid into the
bank.

Creditors'
assignees, be-
fore discharge,
bound to send
to official
assignee list of
unclaimed
dividends and
debts due to
estate, and to
pay monies in
their hands
into the bank.
Formerly
official and
sole surviving
creditors'

(c) *Green v. Weston*, 3 Mon. & A. 414; 3 My. & C. 385.

CHAP. XV.

assignee jointly filed bill against representatives of deceased creditors' assignee for account of unclaimed dividends.

Seem, now creditors' assignee can alone proceed.

Where no surviving creditors' assignee, official assignee not of right entitled to sue for unclaimed dividends, *seem*.

Quære, creditors themselves alone entitled to sue in such case.

Green v. Weston, remarks on.

Sed quære, court would lean in favour of official assignee, and permit him to sue in place of creditors.

But it is doubtful whether that duty would not now fall to the creditors' assignees alone if any of them survived the deceased assignee, as it seems incident to the trusteeship of the assignees, and by the appointment of a creditors' assignee the official assignee's interest in the assets has ceased. If there be no creditors' assignee surviving, then, as has been shown, it is open to doubt whether the property in the bankrupt's assets reverts in him; and as it has been held that monies in the hands of an assignee to answer dividends already declared in favour of a creditor are no longer estate of the bankrupt (c), and, as the official assignee was never a trustee of such monies, while they remained in the hands of the creditors' assignee, it seems more than questionable whether he is entitled to sue for them now. If this be so, there seems no person to sue unless the creditors themselves do so. It is true that, in the case above noticed of *Green v. Weston*, Lord Cottenham seems to have thought that the decision in *Wackerbath's case* did not validly establish the principle that monies held to answer dividends ceased for all purposes to be estate of the bankrupt; and so the question may be held to resolve itself into that before discussed, viz., whether the estate of the bankrupt reverts in the official assignee on the death of the sole or surviving creditors' assignee; but here a difficulty will arise, even though it should be held that such property does revert, for the right of the official assignee, as in *Green v. Weston*, to sue, is not founded in his right of property in the assets of the bankrupt, but in his liability as trustee, and his duty and right to see that his co-trustee performs his trust, and to secure the trust property; but, under the Act of 1861 the official assignee would in any case not become liable for these dividends, for he was not a trustee of them at any time, and his title to the bankrupt's assets only accrues after the breach of trust has actually been committed.

It would, then, seem a strain of principle to say he is entitled to have funds secured for which he could not become liable and of which he never was a trustee. As, however, there is plainly in such a case no one else who could sue except the creditors and, from the nature of the case, they are most unlikely to do so; the court might probably be induced to lean as strongly as possible in favour of the official assignee's right, and if it held that the assets vest in him, it would probably also hold that part of those assets was the right of suit against the deceased assignee or his executors, in

(c) *Ex parte Wackerbath*, 2 G. & J. 151; Buck, 495.

respect of the unclaimed dividends, to have them paid up and secured with interest in the manner provided by the act (*d*).

Where an assignee died, having unclaimed dividends in his hands, the court, upon the petition of his executor, ordered the fund into court, but refused to release the executor until new assignees were appointed (*e*). The Statute of Limitations will not be a bar to a claim for dividends (*f*), for the assignees are express trustees before dividend for the general body of creditors, after dividend for the particular creditors to whom the dividends have been allotted. The court will not enforce an order for payment of money from a bankrupt's estate to a third party, where the order was obtained upon an *ex parte* application, and without notice to the creditors' assignee, although the official assignee had approved of the claim (*g*). In a case in which an order had been made on summons for the administration of the estate of a testator, on the application of a creditor, and after the making of the order, the sole executor and trustee had become bankrupt, an order was made by the Lords Justices on appeal, appointing a receiver, although the assignees were not before the court, they having no right to receive the trust estate, but the plaintiff was directed to serve them with notice of all proceedings (*h*).

The creditors' assignee, having wound up the affairs of the bankruptcy, is entitled to an order releasing him from all further liability and from further duties in respect of the assets, which order, by section 180 of the Act of 1861, shall operate to release the creditors' assignee from all claims and demands of the creditors, or of any person who might have proved under the bankruptcy, subject nevertheless to such conditions, if any, as shall be expressed in such order of discharge. In a late case it has been decided that the salary payable to official assignees under the Act of 1861, includes all remuneration to which they are entitled for duties performed by them under the Winding-up and similar Acts, that they cannot claim remuneration under the Act of 1849, for duties performed since the 11th October, 1861, in respect of bankruptcies which occurred before the latter date, and lastly, that they cannot retain even small sums of money although probably due to them without a regular investigation of the assets (*i*).

Assignees being trustees, cannot set up Statute of Limitations as to unclaimed dividends.

Court will not enforce order for payment from assets to a third party obtained *ex parte*, without notice to creditors' assignee, although official assignee assented.

Assignees entitled to notice of proceedings relating to property held by bankrupt as a trustee.

Creditors' assignee, after winding up affairs of bankrupt, entitled to order of discharge.

The salary of official assignees under the act of 1861 includes all remuneration, for duties done since 11th Oct. 1861, under bankruptcies before that date.

(*d*) See *Smith v. Jameson*, Peake, 279; 46, 330.
Wray v. Barwis, Ib. 109.

(*e*) *Ex parte Raikes*, 3 Dea. 494; Mon. & C. 96.

(*f*) *Ex parte Healey*, 1 Dea. & C. 361; *Ex parte Bolton*, Ib. 556; 1 Mon. & A. 60; and see *Ex parte Ross*, 2 Glyn & J.

(*g*) *Ex parte Ladbury*, 13 L. T., N. S. 446.

(*h*) *Re Johnson*, 1 Law Rep., Ch. Appeals, March 8, 1866.

(*i*) *Re Graham*, 1 Law Rep., Ch. Appeals, 175.

CHAPTER XVI.

CREDITORS.

CHAP. XVI.

Vote for choice
of assignees.

May petition
for removal of
creditors'
assignee or
new appoint-
ment on
vacancy.

Entitled to
printed copy
of accounts.

May inspect
list of creditors
who have
proved.

May inspect
and take
copies of
proceedings.

May examine
creditors'
assignee's
statement of
assets, receipts
and payments.

Entitled to
dividend and
interest where
there is a
surplus.

A CREDITOR, on proving his debt, is entitled to vote in the choice of assignees.

One fourth part in value of the creditors who have proved, may at any time petition for the removal of a creditors' assignee : sect. 124 of the Act of 1861 ; and, by the same section, on a vacancy in the office, any creditor may apply to the court to appoint a meeting for a new choice. By sect. 139, also, two or more creditors may apply for the removal of an assignee who has been guilty of any neglect or misfeasance.

Every creditor who has proved is entitled, without applying for it, to a printed copy of the assignees' accounts when audited, both those of the official and of the creditors' assignees : sects. 119 and 130 of the Act of 1861 ; and is entitled to inspect and take copies of the statement of accounts filed by the bankrupt under sect. 141, and he is entitled without application to a printed copy of an abstract of the same statement : sect. 142.

He is also entitled to inspect the list of the creditors who have proved, with the nature and amount of their debts : sect. 147 ; and may apply to the court to examine any person tendering a proof, or who has proved, or any person capable of giving evidence on the debt, the subject of the proof made or tendered : sect. 148.

He is also entitled, under sect. 232 of the Act of 1849, to inspection by himself or his attorney at such times as the court shall direct, of the proceedings mentioned in that section (*see ante*, p. 838), and to take copies thereof ; but this section, and the exceptions which have been held to lie to it, have been already discussed in the Chapter relating to the Assignees, p. 839.

He may attend and examine the statement of the creditors' assignee relative to the estate of the bankrupt and its condition at the dividend meeting, and compare the receipts with the payments : sect. 174 of Act of 1861.

He is entitled to his proportion of the net produce of the bankrupt's estate, so far as it goes, and to interest, if there be a surplus. And the only instances of priority of debts known to the bankrupt

CHAP. XVI.

laws are, the case of the landlord who distrains for his rent; the case of creditors who hold securities for their debts; in the case of friendly societies or savings banks; or servant or clerk, labourer or workman and apprentice fee; in all other cases, all creditors who prove under the fiat are entitled to equal dividends of the effects, whether their debts be by specialty or simple contract merely.

He is entitled to have sent to him by post a statement of the dividend to which he is entitled: sect. 178 of Act of 1861.

He is privileged from arrest in coming to prove his debt, on the same principle as a witness is protected; if arrested, he is entitled to be discharged on application to the proper court (*see Bankrupt Protection*). Under the old constitution of the court he might have applied to the Chancellor; (*see ante, Practice on Proof of Debt*).

The petitioning creditor is entitled to the like privilege, and for the like reason (*a*), while watching the progress of the petition and attending to propose himself as assignee.

Any creditor is interested in seeing that the creditors' assignees do their duty, and is justified in moving the court to interfere to compel its performance, and even where the assignees are acting according to the best of their discretion, yet if the creditor thinks such discretion unsound, he may apply to the court to interfere; but in such case he risks costs if the court should think the assignees in the right. It has been held, that any creditor may compel the assignees to sell the property of the bankrupt, even against their judgment (*b*), but cannot prevent them from selling, even though the sale may be injudicious (*c*); it is, however, doubtful how far this rule would be followed now; the best course for a creditor to take would be, to apply for a meeting of creditors, and on their resolution the assignees would be compelled to act (*see ante, Assignees; post, Meeting of Creditors*).

All disputes between the assignees and the creditors, or any of them, relative to the administration of the estate or the conduct of the affairs in the bankruptcy, is to be subject to the jurisdiction of the Court of Bankruptcy: sect. 136 of Act of 1861.

On a new choice of assignees being ordered, the creditors are entitled to have seven days' previous notice given in the Gazette: sect. 124.

Only priorities allowed as between creditors.

Dividends without distinction of specialty or simple contract debts.

Creditor entitled to notice by post of dividend. Privileged from arrest in coming to prove debt.

Petitioning creditor entitled to like privilege while attending to propose himself as assignee, &c.

Any creditor may move court to compel performance of duty by creditors' assignees.

Might compel assignees to sell, but could not prevent sale, *sed quære* as to this rule now.

Seem, he should apply for meeting of creditors and obtain resolution by them.

Disputes between assignees and creditors or *inter se*, to be subject to jurisdiction of Court of Bankruptcy.

Notice in Gazette of new choice of assignees.

(a) *Selby v. Mills*, 6 M. & P. 253.

(b) *Ex parte Goreing*, Cooke, 289; see

Ex parte Hughes, 6 Ves. 622; *Ex parte Miller*, 1 M., D. & D. 39.

(c) *Ex parte Montgomery*, 1 G. & J. 338.

CHAP. XVI.

Creditor entitled to have dividend declared.

His remedy for dividend petition, not action at law.

Should have notice of resolution that no further proceedings to be taken in bankruptcy.

May insist on being heard against bankrupt's order of discharge.

Exceptions.

Creditor may oppose before Court of Appeal, although he has not before commissioner; and may be called as witness, without having proved.

By sect. 166 of the Act of 1861, contract, security, &c. for forbearing to oppose order of discharge, to be void;

except in hands of *bonâ fide* holder for value, without notice.

The creditor is absolutely entitled to have the dividend declared, and the declaration will not be delayed unless there be a clear equity for such delay (*c*); his remedy for his dividend is by petition to the court, not by action at law: Act 1849, sect. 190.

By the Act of 1861 he is entitled to notice of any resolution of a meeting that no further proceedings shall be taken in bankruptcy, in order that he may take part in the adjourned meeting on the question: sect. 110; but a sitting for last examination is not a meeting of creditors within the meaning of that section (*d*).

He is entitled to be heard against the bankrupt's obtaining his order of discharge: sect. 158; but not if he has not proved, unless, indeed, he has a good excuse for not having done so; and this was so under the former law (*e*). So, an execution creditor, holding the bankrupt in prison, cannot be heard against his discharge.

Nor can a creditor entitle himself to oppose the discharge in the Court of Appeal by proving after the order was made in the court below (*f*). If a creditor, however, has proved his debt, he may oppose the order of discharge in the Court of Appeal, though he has not actively done so before the commissioner (*f*). But though a creditor cannot oppose the discharge unless he has proved, he may be examined as a witness on the opposition of the assignees or another creditor (*g*).

By sect. 166 of the Act of 1861, any contract, covenant or security, made or given by a bankrupt or other person, with, to or in trust for any creditor, for securing the payment of any money as a consideration or with intent to persuade the creditor to forbear opposing the order for discharge, or to forbear appealing against or petitioning for a rehearing of the same, shall be void, and any money thereby secured or agreed to be paid shall not be recoverable, and the party sued on any such contract or security may plead in general that the cause of action accrued pending proceedings in bankruptcy, and may give this act and the special matter in evidence: provided always, that no such security, if a negotiable security, shall be void as against a *bonâ fide* holder thereof for value without notice of the consideration for which it was given.

This section is analogous to sect. 202 of the Act of 1849, with the addition of the proviso, and was probably suggested by the

(*c*) *Ex parte Thompson*, 2 M., D. & D. Jur. 699; *Re Haughton*, 28 L. T. 177; 761; see *Ex parte Greenwood*, 12 W. R. 924. *Ex parte Mexton*, 2 M., D. & D. 442.
 (*d*) *Re Wilson*, 14 L. T., N. S. 106. (*f*) *Ex parte Greenwood*, 12 W. R. 924.
 (*e*) *Ex parte Norton*, De G. 504; 11 371. (*g*) *Re Hahn and Freystadt*, 30 L. T.

Goldsmid v. Hampton.

Money paid to creditor to withdraw opposition, &c., may be recovered as money had and received, with penalty of treble amount.

A bond is a contract within sects. 164 and 166.

Security given to creditor for not opposing last examination held not void under sect. 202 of the Act of 1849.

Taylor v. Wilson.

case of *Goldsmid v. Hampton* (*h*), where the point was ruled, that without such a proviso a bill given on such a consideration was void, even in the hands of a *bonâ fide* holder for value. This was not held to be law as to a bill given for the purpose of keeping alive, notwithstanding the grant of a certificate or order of discharge, a debt proveable under the bankruptcy; wherefore such a proviso was not needed in the 164th section. In *Goldsmid v. Hampton* it was also held that a bill accepted before certificate, and drawn and indorsed afterwards, was not a *security* within the meaning of sect. 202 of the Act of 1849, and that a *bonâ fide* holder might sue on such a bill. If money be actually paid to a creditor to obtain consent or withdraw opposition it may, under this section, be recovered by the person paying it, unless he be the bankrupt (*i*), and in such case by his assignees (*k*), as money had and received, &c., and it seems the recipient will have to repay the money to the person paying it, besides being liable to treble payment under section 167. A bond is a contract under this and section 164 (*l*), and even where the contract was for the benefit of all the creditors, it was held void under the section analogous to this (*m*). In the case of *Birch v. Jervis* above cited, which was decided upon the statute of 6 Geo. 4, c. 16, it was held that a bill given to a creditor to keep him from opposing the certificate was not void *ab initio*, and would be good in the hands of a *bonâ fide* holder for value without notice, but that statute had no words in the section applying to this matter, as to inducing a creditor to forbear opposition, and such a bill would be void under the Act of 1849 (*n*). Where a creditor signed the certificate on a contract that he should supply goods, and be guaranteed payment of the price, the guarantee was held bad (*o*). It has been held, however, that a security given by a bankrupt to a creditor to induce him not to oppose the last examination, was not void under sect. 202 of the Act of 1849 (*p*), but the form of the proceedings rendered it only necessary for the court to say whether opposition to the last examination was, as such, opposition to the certificate, and the court expressed an opinion that perhaps the nature of the contract should have been left to the jury. In that case the security was given simply to induce the creditor to

(*h*) 5 C. B., N. S. 94; 27 L. J., C. P. 286; see also *Birch v. Jervis*, 3 Car. & P. 379; *Reed v. Wiggins*, 13 C. B., N. S. 220; 32 L. J., C. P. 131; 11 W. R. 148.

(*i*) *Smith v. Bromley*, 2 Doug. 697, n.

(*k*) *Sievers v. Boswell*, 4 Sc., N. R. 165.

(*l*) *Sumner v. Brady*, 1 H. Bl. 647; *Kidson v. Turner*, 3 H. & N. 581; 27 L. J.,

Exch. 492; see *Jackson v. Lomas*, 4 T. R. 166; *Thomas v. Rhodes*, 3 Taunt. 478.

(*m*) *Jones v. Barkley*, 2 Doug. 684, 698.

(*n*) *Goldsmid v. Hampton*, 5 C. B., N. S. 94; 27 L. J., C. P. 286.

(*o*) *Hankey v. Cobb*, 1 Q. B. 490.

(*p*) *Taylor v. Wilson*, 5 Exch. 251; 19 L. J., Exch. 241; 14 Jur. 336.

CHAP. XVI.

Reeves v. Hawkes, Goldsmid v. Hampton followed.

Proviso in Act of 1861, sect. 166, will not save bill given under Act of 1849.

Re Tristram.

Penalty of treble value recoverable under Act of 1861, sect. 167.

Petitioning creditor receiving money, &c. more than other creditors forfeits his debt and money, &c.

stay away from the meeting for passing the bankrupt's last examination. In the subsequent case of *Reeves v. Hawkes* (q), the matter was left to the jury whether the security was given to induce the forbearance of opposition to the bankrupt's passing his last examination only, or to his obtaining his certificate, and they found the latter; a rule for a new trial was refused, and for judgment *non obstante veredicto* discharged. It has been held, that the proviso in the above enactment will not make a bill given under the former act good (r); but where a bill given by a friend of the bankrupt for this purpose was taken up by the giver, he could not recover the sum paid to take up the bill from the person who had received it, being *in pari delicto* (s).

A bankrupt was opposed on the consideration of his certificate; shortly afterwards a friend of his, with the alleged concurrence of the solicitor to the assignees, paid the opposing creditor and the creditors' assignee two sums of money amounting to 50*l.* per cent. on their debts, whereupon opposition was withdrawn, and the bankrupt obtained his certificate. Another creditor petitioned that the parties might be examined, and on the day for examination requested to be allowed to withdraw his petition, as the opposing creditor and the creditors' assignee offered to pay the money received to the bankrupt's estate, as well as all costs incurred, his request was granted with much hesitation by the full Court of Appeal (t), who doubted of their jurisdiction to allow such withdrawal.

By sect. 167 of the Act of 1861, if any creditor of a bankrupt shall obtain any sum of money, or any goods, chattels or security for money, from any person, as an inducement for forbearing to oppose, or for consenting to the allowance of the discharge of such bankrupt, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels or security so obtained.

By 12 & 13 Vict. c. 106, s. 268, a petitioning creditor receiving from the bankrupt, after the bankruptcy, money, satisfaction or security for more in the pound upon his debt than the other creditors, shall forfeit his debt and return the money, security, &c. And if the debt of the petitioning creditor be not really due, or he should not prove the requisites for the adjudication, or if the fiat has been issued, or the petition for adjudication filed fraudu-

(q) 6 L. T., N. S. 53.

(r) *Reed v. Wiggins*, 13 C. B., N. S. 220; 32 L. J., C. P. 131; 11 W. R. 148.

(s) *Watson v. Bennet*, 12 W. R. 1008.

(t) *Re Tristram*, 3 De G. & J. 451; 32 L. T. 170.

lently or maliciously, the court may, on petition, order satisfaction. (See 12 & 13 Vict. c. 106, s. 267.)

By sect. 108 of the Act of 1849, in any action brought against the petitioning creditor, either alone or jointly with any messenger or assistant or other person appointed by the court, for anything done in obedience to the warrant of the court, proof by the plaintiff in such action that the defendant or defendants, or any of them, is or are a petitioning creditor or creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

Under sect. 186 of the Act of 1861, any creditor nominated by a meeting for the purpose may apply to the court for a stay of proceedings; and all the creditors who desire to be heard for or against the resolution, are entitled to be so heard. (See *Meeting of Creditors*.)

Creditor nominated by meeting may apply for stay of proceedings.

If a creditor swear falsely to his debt (Act of 1849, sect. 254), or make a false declaration in proof of his debt (sect. 145 of Act of 1861), he may be indicted and convicted as for perjury.

Creditor swearing falsely, &c., indictable for perjury.

The word "creditors," in sect. 112 of the Act of 1849, includes only creditors who can come in under the bankruptcy, and a protection order is available against such creditors only, and not against creditors for debts subsequent to the bankruptcy (*t*).

Protection under s. 112 of the Act of 1849 only against creditors under the bankruptcy.

Creditors may vote at a meeting by proxy, which does not require a stamp (sect. 229). As to arrangements with creditors, see *post*, *Chapter on Arrangements*.

Meetings of Creditors.—Under the Act of 1861, several important rights and duties are conferred on the creditors assembled in meeting, or particular majorities of them.

Meetings of creditors may be held in general under the presidency of a registrar of the court: sects. 52, 58; and perhaps of any other person appointed by the court for the purpose, though no express power is given to the court to make any such appointment: sect. 109.

Meetings of creditors may be held under a registrar.

By that section, as soon as conveniently may be after adjudication shall have become absolute, the court shall appoint a meeting of the creditors, of which ten days' notice shall be given in the London Gazette, and which meeting shall be held at such time and place as the court shall appoint; and at such meeting a regis-

After fiat absolute, meeting to be held of creditors on notice in Gazette, and proofs to be received.

CHAP. XVI.

Registrar
presiding has
powers of
commissioner,
except as to
committal.

"Such other
person" could
not, *semble*,
tender oath,
examine or do
more than
receive proof
tendered.

Application
to hold first
meeting else-
where than
where court
usually sits, to
be made to
commissioner.

Creditors may
by letters of
attorney ap-
point official
assignee or
other person to
represent them.

First meeting
to be fourteen
days after
adjudication,
or as court or
registrar
appoints.

Official assign-
ee to give at
first meeting
full informa-
tion as to
estate, debts,
&c.

trar, or such other person as the court shall appoint for that purpose, shall preside, and receive the proofs of the debts of the creditors. The provisions of this clause are altogether new. By the 52nd and 58th sections the registrars, if acting, in taking proof of debts, &c., have all the powers of the commissioner, except that of committal; but "such other person" as may be appointed under this clause would, it seems, have no power except what might be impliedly given by this clause; and it seems, that this would go no further than to receive the proof tendered if undisputed, but would not authorize "such other person" to examine any witness or tender any oath, or investigate in any way the validity of the debt. It would seem, therefore, advisable that, unless in case of absolute necessity, "such other person" should never be appointed.

If it be desired by any creditor, or by the bankrupt, that the first meeting of creditors be held at any other place than that where the court having jurisdiction in the matter usually sits, application shall be made to the commissioner, supported by affidavit, within seven days after adjudication. If the application be by any one but the petitioning creditor, a clear day's notice thereof must be given to the petitioning creditor: General Order, 12th October, 1861, r. 3.

Creditors may by letters of attorney, in the form given, Schedule 19 to the same General Order, 1861, authorize the official assignee, or any other person, to represent them at any meeting of creditors, and to vote on any question submitted to the creditors at such meeting or any adjournment thereof, and also in the choice of creditors' assignee: General Order, 12th October, 1861, r. 10.

The first meeting of creditors, if adjudication be made on the debtor's own petition or against a deb'tor in gaol without petition, is to be on the fourteenth day after adjudication, or on such other day as the court or the registrar making such adjudication shall think fit to appoint: General Order, 6th November, 1861, altering General Order, 12th October, 1861, r. 29; and the advertisement in such case shall be in the London Gazette and such provincial newspaper or other publication as the commissioner, judge or registrar shall order, within four days after adjudication: rule 30.

At this meeting the official assignee is to attend and give the fullest information in his power of the estate and effects of the bankrupt and of the debts due from his estate, and it shall be lawful for the majority in number and value of the creditors

CHAP. XVI.

present at such meeting or at any adjournment thereof to resolve and determine that the proceedings in the bankruptcy shall be transferred to and thenceforth prosecuted in the county court of any district, other than the metropolitan district, and the court shall order the same accordingly, upon being satisfied that such resolution was duly made.

and if majority in number, &c. of creditors so resolve, court to order transfer to county court district.

At this meeting a majority in value of the creditors present (which is interpreted to mean present or represented by proxy (*see sect. 229*)) shall determine whether any and what allowance for support shall be made to the bankrupt up to the time of his passing his last examination. This has been held to mean only up to the time appointed for him to pass: if he fail to pass, his right to an allowance under this clause ceases (*u*).

Majority of creditors in value to determine allowance for bankrupt.

It was doubted whether this power for the creditors to fix the bankrupt's allowance had not impliedly taken away the power given by the 194th sect. of the Act of 1849 to the commissioner for the like purpose. It has been held, however, that the commissioner's power, though controlled by the power of the creditors, still remains, and that if the creditors do not exercise their power one way or other, the commissioner may exert his (*x*).

Commissioner may exert his power under sect. 194 of the Act of 1849, of fixing allowance, if creditors fail to exercise theirs.

As to the meaning in general of a majority in value, it was held under the Act of 1849 that, in estimating three-fifths in number and value, creditors should be included who were joint creditors of the bankrupt with another or others as well as separate creditors of the bankrupt alone (*y*); and *semble, vice versâ*, where the bankrupts are a firm, with regard to separate creditors (*z*).

In estimating the majority in value, creditors, as well joint as separate, included;

and, *semble*, separate as well as joint, of members of bankrupt firm.

By sect. 110 of the Act of 1861, in case at such meeting or at any other meeting of creditors any proposal shall be made by or on behalf of the bankrupt which in the opinion of the major part in value of the creditors then present ought to be accepted, or if it shall appear to the majority in value of the creditors, present at any meeting, to be desirable on any ground to resolve, and such majority shall resolve, that no further proceedings be taken in bankruptcy, the meeting shall be adjourned for fourteen days, in order that notice of such resolution may be given to every creditor by the official or creditors' assignee, which shall be done accordingly; and if at such adjourned meeting a majority in number representing three-fourths in value of the creditors present shall

Majority in value at meeting may accept proposal of bankrupt or resolve to stay proceedings; but meeting to be adjourned fourteen days and notice given to every creditor.

Three-fourths in value at adjourned

(*u*) *Ex parte Osborn, re Jowett*, 13 W. R. 146.

(*y*) *Ex parte Heath*, 4 De G. & S. 593.

(*x*) *Ex parte Ellerton*, 12 W. R. 722.

(*z*) *Ex parte Calvert*, 3 De G. & J. 95; 27 L. J., Bcy. 42; 4 Jur., N. S. 1258.

CHAP. XVI.

meeting may
suspend
proceedings.

Provision not
made as to
mode of wind-
ing-up bank-
rupt's affairs.

Although
proceedings
suspended,
bankrupt may
be outlawed.

Creditors'
assignee ap-
pointed at first
meeting.

Majority in
value of credi-
tors decide on
security to be
given by him,
its amount, &c.

May appoint
manager under
creditors'
assignee to
collect and
wind-up
estate.

May remove
creditors'
assignee or
manager.

so resolve, the proceedings in bankruptcy shall be suspended, and the estate and effects of the bankrupt shall be wound up and administered in such manner as such majority shall direct, and the bankrupt having made a full discovery of his estate shall be entitled to apply for an order of discharge.

It is, perhaps, needless to observe, amongst the difficulties in the way of carrying out the provisions of this clause, that provision is not made for the manner in which the majority is to direct the affairs of the bankrupt to be wound up, so that it is quite possible that the majority should agree not to proceed in bankruptcy, and yet might not be able to agree on any particular scheme of administration, in which case it seems matters would be at a dead lock.

It seems also possible, that the requisite majority might resolve on an injustice being inflicted on the minority, that separate creditors, for instance, should be paid out of joint estate or the like: the court is not given any control and the section is imperative, that the estate shall be administered as such majority shall direct.

The enactment above contained, that the proceedings in bankruptcy shall be suspended, has been held not to prevent a bankrupt who had not surrendered from being proclaimed an outlaw (*a*).

The first meeting of creditors is the proper time for the choice of a creditors' assignee: sect. 116.

By sect. 122, the majority in value of the creditors present at the meeting for choice of a creditors' assignee shall determine whether any security shall be given by such assignee, and if so, the amount and nature thereof, and such security may, if the creditors so determine, be by way of bond given to any registrar of the court or his successors, who are hereby authorized to sue thereon.

At the same meeting, or at any other meeting called for the purpose, the majority in value of the creditors present (*i. e.* present or represented) may also determine whether a manager shall be appointed to collect and wind up the estate under the inspection of the creditors' assignee or of a committee of creditors, and may appoint such person with such remuneration out of the estate, and generally upon such terms for such period and with such directions as the majority shall think fit.

By sect. 124, a majority in number and value of the creditors may, at any meeting duly called for the purpose, remove the creditors' assignee or manager, or accept of his resignation.

(*a*) *Re Peter Morrison*, coram Mr. Commissioner Holroyd, Feb. 18th, 1862.

CHAP. XVI.

On a new choice of a creditors' assignee being directed, seven days' previous notice in the Gazette should be given to the creditors.

Seven days' notice of new choice to be given.

By sect. 133, it seems the creditors' assignees may summon a meeting by notice, for the purpose of determining whether or not the debts of a bankrupt shall be discharged by means of money raised by way of mortgage or pledge of his assets, or any part thereof; and if three-fourths in value of the creditors attend, either in person or by proxy, they may by the same section pass a resolution accordingly, and the court may make such orders as shall be necessary to carry out the resolution. On this section we have already remarked, in the Chapter as to the Realization of the Assets.

Three-fourths in value of creditors at meeting to determine as to raising money by mortgage or pledges of assets for discharge of bankrupt's debts.

It has been already remarked, that by sect. 136 the court is to decide all questions of dispute between the assignees and creditors, or any of them, whether in a case of bankruptcy or in matters arising under trust deeds of composition or arrangement, &c.; but in all such cases if a resolution of a meeting of creditors has been passed by a majority in number and value of the creditors present or represented, regard shall be had by the court to such resolution, and the same shall not be varied or set aside by the court, unless such resolution shall, in the opinion of the court, be unjust or inequitable, and not fit to be binding and conclusive under the act. Nothing is said as to what ought to be done if two inconsistent or incompatible resolutions be each carried by a majority in number and value of the creditors present or represented at two separate meetings, which is easily supposable. In such a case, we presume, the court would be at large to exercise its judgment in ordering one of the two to be carried out, or perhaps in putting a veto on both. This clause will again come under consideration in treating of deeds of arrangement, and has already been remarked on in the Chapter on the Assignees.

Court determines questions in dispute between assignees and creditors, but has regard to resolution of creditors, passed by three-fourths in number and value.

Sect. 136 of the Act of 1861 does not provide for case of inconsistent resolutions passed by creditors. Presumable authority of court in such case.

By sect. 140, the meeting for the choice of assignees is to be followed immediately by the announcement of a public sitting of the court, to be held, not later than sixty days from that meeting, for the bankrupt to pass his last examination, and notice is to be given to the creditors by the Gazette and such other papers as the court shall direct.

Public sitting of court for last examination.

By sect. 174, at the expiration of four months from the date of the adjudication, or at such earlier period as the court shall appoint, a meeting of creditors is to assemble before the registrar, of which

Meeting for declaration of dividend and to determine

CHAP. XVI.

bankrupt's
allowance.

Similar meet-
ing at end of
every four
months or
sooner for
declaration of
dividend.

Power for cre-
ditors to post-
pone decla-
ration of
dividend, &c.

By sect. 185
of the Act of
1861, three-
fourths in
number and
value of
creditors may
resolve to
wind-up under
arrangement
deed.

Bankrupt
accounting for
property by
fictitious
losses within
three months
before fiat,
guilty of
misdemeanor.
No stamp on
proxies for
creditors'
meetings.

meeting ten days' previous notice in the Gazette and two local newspapers is to be given for declaring a dividend, which has been already remarked on. At the same meeting a majority in value of the creditors present (or represented) shall determine whether any and what allowance shall be made to the bankrupt if he has obtained or shall obtain a discharge: as to this allowance see the Chapter on the Bankrupt.

By the 179th section the like proceedings shall be had at the expiration of each successive period of four months, or earlier, as the case may be, until the whole estate is divided among the creditors; provided that it shall be lawful for the majority in value of the creditors at any such meeting to postpone the period of declaring a dividend, or at any time in declaring a second dividend, to declare also that such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be outstanding not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignee, in which case he shall, as soon as may be, convert such estate and effects into money, and within two months after the same shall be converted, it shall also be divided in manner aforesaid.

It is presumed, that the power of the meeting to declare a dividend final, though in terms confined to a meeting for a second dividend, in fact extends to every dividend meeting after the first.

By sect. 185 of the Act of 1861, at the first meeting of creditors held after adjudication in manner herein provided, or at any meeting to be called for the purpose, and of which ten days' notice shall have been given in the London Gazette, three-fourths in number and value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, composition or otherwise, and that an application shall be made to the court to stay proceedings in the bankruptcy for such period as the court shall think fit.

The method by which the resolution is to be carried out is given in the following sections, but the treatment of them is deferred until we come to speak of Arrangements with Creditors.

The bankrupt is guilty of a misdemeanor if at any meeting of creditors within three months next before the filing of the petition for adjudication he shall have attempted to account for any of his property by fictitious losses or expenses. (*See Penal Clauses.*)

A proxy to vote at a meeting of creditors need not have a stamp: sect. 229.

CHAPTER XVII.

THE BANKRUPT.

THE first duty of a bankrupt after his adjudication shall have come to his knowledge is to surrender within the time fixed for that purpose.

CHAP. XVII.

Duty of bankrupt to surrender.

When.]—The bankrupt, if not in custody, can, in order to obtain his protection, attend and surrender himself at any time, even at the private sitting for adjudication, if he is aware of such sitting, or within the seven days now allowed him to dispute the adjudication (a); in prudence, perhaps, he ought to surrender at or before the first public meeting, and attend the subsequent meetings, for the purpose of affording what assistance he can in preventing persons not authorized from proving under the adjudication; but he is not liable to any penalty, unless he fails to attend at the second public meeting.

Can do so immediately after adjudication.

He ought to do so at or before the first public meeting, and attend meetings to render assistance.

If by mistake the days appointed for the surrender of the bankrupt are not inserted in the Gazette at the time required by the statute, the commissioner can appoint other days and direct a new advertisement (b).

Formerly a bankrupt not surrendering in proper time after due service of notice of adjudication against him was guilty of a felony, but the offence is now only a misdemeanor. (*See Crimes.*)

Bankrupt not surrendering in due time guilty of misdemeanor.

Time for, how enlarged.]—By 12 & 13 Vict. c. 106, s. 104, the court shall have power from time to time to enlarge the time for the bankrupt to surrender himself for such period as the court shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself. The time for an order under this section must be made at least six days before the last of the days appointed at the date of the adjudication and advertised for his surrender. There was a similar provision under 5 & 6 Vict. c. 122, s. 33, but though no

Court has power to enlarge time by order made six days before expiration of period limited.

(a) *Ex parte Wood*, 1 Rose, 46; 18 Ves. 1.(b) *Ex parte Stringer*, 12 Jur. 972; 18 L. J., Bcy. 1.

CHAP. XVII. order was made within the period thereby limited, the Court of Review or Vice-Chancellor in bankruptcy under the general jurisdiction of the court would, on petition either of the bankrupt or the assignees, give the bankrupt leave to surrender, where the non-surrender had arisen from accident or unavoidable necessity, such as illness or his being abroad.

Commissioner, under sect. 12 of the Act of 1849, has discretionary power to allow surrender after expiration of time limited.

And now under the 12 & 13 Vict. c. 106, s. 12, the commissioner has jurisdiction to give the bankrupt leave to surrender after the expiration of the time limited by the advertisement (c); and he will generally do so unless the assignees object or threaten criminal proceedings (d); and it is a matter entirely in the discretion of the commissioner, and with the exercise of this discretion the Court of Appeal is very reluctant to interfere (e).

Petition for this purpose to be either by bankrupt or assignees.

The petition under the last-named section may be either by the bankrupt himself or by the assignees, stating the original petition and adjudication shortly, the summons, and the facts of the case, and praying that the time for his surrender and examination may be enlarged to a day named, and that the court may appoint a sitting for the purpose of taking his surrender and examination.

On what grounds prayer granted.

And the court will thus enlarge the time, where the bankrupt's not having duly surrendered has arisen from unavoidable necessity (f), or from accident (g), or from his being abroad or absent at the time (h), or from the commissioner not attending on the day limited for his surrender (i), or from any innocent default of the bankrupt (j), or the like, even although the assignees should object to it (k); but not where the bankrupt has absented himself purposely (l), except under special circumstances (m). Even when the court had no favourable opinion of the bankrupt's conduct, leave to surrender was nevertheless given, considering the surrender to be for the benefit of the creditors (n). And leave to surrender will not be refused, where, though the bankrupt has opposed and delayed the proceedings in bankruptcy, it does not appear that he has done so *malâ fide*, or without reasonable cause (o).

Refused, where.

Leave given, where for benefit of creditors, although bankrupt had absconded.

Or where delay of proceedings not *malâ fide*.

(c) *Ex parte Atkinson*, 4 De G. & S. 62.
(d) *Re Bunny*, 29 L. T. 234; *Re Waugh*, 11 W. R. 879.

(e) *Ex parte Gordon*, 19 L. J., Bcy. 12.
(f) See *Anon.*, 15 Ves. 1; *Ex parte Reeve*, 1 M., D. & D. 624.

(g) See *Ex parte Dawson*, 2 Cox, 48.
(h) *Fuller's case*, 10 Ves. 183; *Ex parte Dodds*, 1 Dea. & C. 76; Mon. 506; *Ex parte Carey*, 7 Jur. 244.

(i) *Ex parte Grey*, 1 Ves. 195.

(j) *Ex parte Higginson*, 12 Ves. 496;

Ex parte Shiles, 2 Rose, 381; 1 Mad. 248;
Ex parte Jeffreys, 2 Dea. & C. 686.

(k) *Ex parte Shiles*, supra.

(l) *Ex parte White*, 2 Bro. 47; *Ex parte Rodgers*, Amb. 307; *Ex parte Grey*, 1 Ves. 195.

(m) See *Ex parte Berryman*, 1 Glyn & J. 223.

(n) *Ex parte Atkinson*, 4 De G. & S. 62.

(o) *Ex parte Young*, 11 L. T., N. S. 355.

CHAP. XVII.

Where the bankrupt had absconded to avoid his creditors he was allowed further time to surrender only on the terms of refunding what he had taken with him, and paying all the costs incurred by the assignees incidental to his application for leave (*p*). On what terms in such cases.

But in *Re Waugh* above cited (*q*), where the circumstances were very similar to those in the case just mentioned, the court allowed the surrender without requiring the bankrupt to refund 500*l.* with which he had absconded and which he had spent, the court thinking that his surrender would lead to the discovery of assets and be beneficial to the creditors. So, where the bankrupt left the country on account of his embarrassments, and consequently did not hear of the fiat till after the time limited for his surrender had expired, he was permitted to surrender, but he was not allowed his costs of petitioning (*r*). *Re Waugh.*

In another case, however, the bankrupt, previously to the adjudication, absconded to France; criminal proceedings were commenced against him for non-surrender, and he was taken upon a warrant in France, brought to England and committed for trial. Upon petition for leave to surrender, the bankrupt alleged that he absconded from causes foreign to the bankruptcy, but the court refused to allow the surrender (*s*): and even where the bankrupt was abroad at the time of the adjudication which was on the 9th of June, 1858, and it appeared that he was insolvent when he went abroad and had gone with the consent of his creditors and for the purpose of realizing his estate, but there was no evidence to show that he was still abroad, except a letter received from him and dated February, 1858, the court, the time for his surrender having elapsed, refused to enlarge it without further evidence (*t*). But in general it may be stated, that where it is consistent with public justice and for the interest of the creditors, that the bankrupt should surrender, an order will be made for the purpose, although the statutory time has expired and the assignees object (*u*). *Ex parte Nairne.*

And as a surrender is for the benefit of the estate, the bankrupt, who, not being guilty of any default, petitions for and obtains leave to surrender, is entitled to his costs out of the estate (*v*); as, where the bankrupt is abroad when the petition for adjudication *Ex parte Gerard.*

Bankrupt, obtaining leave to surrender, gets his costs of petition, when.

(*p*) *Ex parte Wyett*, 32 L. T. 152.

(*q*) 11 W. R. 879.

(*r*) *Ex parte Perry*, 11 Jur. 48; De G. 377.

(*s*) *Ex parte Nairne*, Fonb. B. C. 37.

(*t*) *Ex parte Gerard*, 31 L. T. 346.

(*u*) *Ex parte Skelton*, 3 De G. & J. 47.

(*v*) *Ex parte Smith*, 4 Dea. & C. 810; 2 Mon. & A. 382; *Ex parte Carey*; *Ex parte Reeve*, supra, p. 902.

CHAP. XVII.

is filed, and is not informed thereof till after the time for surrendering has passed, the court, upon petition, will permit him to surrender, and will allow him his costs out of the estate (*w*); but after great delay, as when the fiat had been issued upwards of twenty years, the bankrupt had to pay the costs of the order and of making a surrender (*x*).

Ex parte Pennell.

In January, 1848, a fiat issued; in November, the bankrupt presented a petition for leave to surrender, stating that he left England in September, 1847, in consequence of family disagreements, and in the full belief that he had left enough to pay all his creditors in full, and that he had but lately returned to this country. The assignees appeared on the petition, and no objection having been made, the order was made, and the costs paid out of the estate. The bankrupt afterwards made a statement to the commissioner to the effect that he had left England from pecuniary embarrassments, and had taken much of his property with him; a petition of the assignees praying that the order obtained by the bankrupt for his surrender should be discharged, was dismissed with costs (*y*).

Order permissive, not mandatory; but does not protect against prosecution for non-surrender.

The order is not mandatory upon the bankrupt; nor will he be guilty of any contempt by not surrendering at the time thus given him (*z*). On the other hand it does not, it would seem, relieve him from his liability to be prosecuted for not surrendering within the limited period (*a*); it merely indicates the opinion of the court in favour of the bankrupt, which indeed may have the effect of preventing such a prosecution, as the court has it in its power to render such a prosecution ineffective by annulling the adjudication (*b*). But the court will not order a meeting to take the surrender of the bankrupt where a true bill has been found against him for non-surrender (*c*).

Extension of time to surrender will not be granted, reserving leave for proceedings to annul.

Bankrupt cannot, without

An extension of time to surrender will not be granted on the application of the bankrupt, reserving to him leave to take proceedings to annul the adjudication (*d*). If he desires to annul he ought to surrender in time or else he may proceed to dispute the adjudication by an action without surrendering; he cannot, how-

(*w*) *Ex parte Harrison*, 6 Jur. 1093.
 (*x*) *Ex parte Tarleton*, Mon. & C. 677; 4 Dea. 178.
 (*y*) *Ex parte Pennell*, 13 Jur. 165; 3 De G. & S. 555; 18 L. J., Bcy. 7.
 (*z*) *Ex parte Johnson*, 14 Ves. 40.
 (*a*) See *Ex parte White*, 2 Bro. 47.

(*b*) See *Ex parte Ricketts*, 6 Ves. 445; and *Ex parte Wood*, 1 Atk. 221; *Ex parte Lavender*, 1 Rose, 55.
 (*c*) *Ex parte Levi*, 2 Mon. & A. 686.
 (*d*) *Ex parte Hobbins*, 1 M., D. & D. 657.

CHAP. XVII.

ever, it seems, maintain a petition to annul without surrendering (*e*), although, indeed, there seems no good reason for the rule where the ground of the petition is an invalidity in the adjudication.

surrender, petition to annul.

A detaining creditor has no right to be heard in opposition to a bankrupt's application for leave to surrender (*f*).

Detaining creditor cannot object to leave to surrender.

By stat. 12 & 13 Vict. c. 106, s. 112, whenever any bankrupt is in prison or in custody under any process, attachment, execution, commitment or sentence, the court may, by warrant directed to the person in whose custody he is confined, cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the court for bringing up such bankrupt. (*See the remainder of this section, post. And see the form of the Warrant, post, Appendix.*)

By sect. 112 of the Act of 1849 a bankrupt, if in prison, &c. under any sentence, &c. may, by order of Court of Bankruptcy, be brought before it, the costs being payable out of the estate ;

When, however, he has been adjudicated a bankrupt on his own petition, he must pay the fees for bringing him up, before the court will issue its warrant for the purpose (*g*).

but if adjudicated on his own petition he must pay fees in such case.

And by stat. 12 & 13 Vict. c. 106, s. 161, if any bankrupt apprehended by any warrant of the court (*see* 12 & 13 Vict. c. 106, s. 117) shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Bankrupt taken under warrant of court within time for surrender has, on submitting, &c. same benefits as on voluntary surrender.

If a bankrupt do not however surrender in due time, proclamation will be made, even although, being an officer in the army, he was obliged to leave the country and join his regiment under orders. This latter ground will be a good one for afterwards purging his outlawry and obtaining leave to surrender, but still the process must go on in default of the bankrupt's surrender in time (*h*).

Proclamation in case of non-surrender.

By 12 & 13 Vict. c. 106, s. 112, if the bankrupt be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this act limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination, until his certificate be allowed by the court, as the court shall from time to time, by indorsement upon the

Protection under sect. 112 of the Act of 1849 ;

(*e*) *Ex parte Drake*, 2 D. & Ch. 91 ;
 sed vide cases there cited, and note.
 (*f*) *Re Waugh*, 11 W. R. 879.

(*g*) *Re Evans*, 5 L. T., N. S. 213.
 (*h*) *Re Davies*, 5 L. T., N. S. 853.

CHAP. XVII.

Not available
against sub-
sequent
creditors.

Creditor
entitled to
protection
order under
sect. 112, if
arrested, to be
discharged on
production of
copy of order.

Penalty of 5*l.*
a day recover-
able.

This remedy
leaves common
law right of
action for
malicious
arrest.

The protection
under sect. 112
relates to all
arrests by
creditors under
the bank-
ruptcy,
whether for
debts proveable
under the
bankruptcy or
not.

summons of such bankrupt, think fit to appoint. But this protection is only available against orders under the particular bankruptcy, and is not so against those claiming for debts subsequent to the bankruptcy (*i*).

And by sect. 113, if any bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender and while protected by order of the court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at Westminster, in the name of such bankrupt, with full costs of suit.

The remedy given for an illegal detention under this enactment is cumulative, and does not take away the debtor's common law remedy for a false and malicious arrest, if there be a case for it (*j*); nor is the sum mentioned in this clause a measure of damages upon such an action; but, it would at the same time appear that, the mere fact that the creditor knows the debtor has obtained a protection from the commissioner, will not in itself be sufficient evidence of want of probable cause, to make the creditor liable for a malicious arrest.

This protection from arrest extends to all arrests by creditors, whether for debts proveable under the bankruptcy or not (*k*); to arrests under attachments for the nonpayment of money (*l*); and even to arrests under extents at the suit of the crown (*m*); and to an arrest upon a *capias utlagatum* (*n*); and to an attachment issued for contempt in not paying money into the Insolvent Debtors' Court (*o*); and to a committal under the Insolvent Debtors' Act,

(*i*) *Re Poland*, 14 W. R. 599.

(*j*) *Phillips v. Naylor*, 3 H. & N. 14; 27 L. J., Exch. 222.

(*k*) *Ex parte Shepherd*, 29 L. T. 298; see also *Wallinger v. Gurney*, 11 C. B., N. S. 182; 31 L. J., C. P. 55; *Darby v. Baugham*, 5 T. R. 209.

(*l*) *Re M^r Williams*, 1 Sch. & Lef. 169; *Ex parte Parker*, 3 Ves. 554; *Ex parte Jeyes*, 3 Dea. & C. 764; *Wyllie v. Green*,

1 De G. & J. 410.

(*m*) *Ex parte Russell*, 1 Rose, 278; 19 Ves. 163; *Ex parte Temple*, 2 Rose, 22; 2 Ves. & B. 391.

(*n*) *Ex parte Helsby*, 1 Dea. & C. 16; Mon. 355; on appeal, M. & Bl. 78; *Ex parte Metcalf*, 2 Bcy. & In. 3.

(*o*) *Ex parte Bury*, 7 Jur. 406; 3 M., D. & D. 309.

for nonpayment of a balance due from the bankrupt as assignee under that act (*p*). CHAP. XVII.

It has been doubted whether it enables a discharge from arrest on a warrant for nonpayment of rates, *e. g.* poor rates, but there seems no reason why it should not. It relates in terms to a retaking on an escape warrant (*q*), but does not extend to retaking a prisoner for any escape, by the marshal of the Queen's Bench prison, without an escape warrant; what is said of a taking upon an escape warrant in the statute relating to a retaking by a creditor (*r*).

It seems doubtful whether the section will extend absolutely and unconditionally to release a bankrupt, who has been taken by his bail in discharge of the bail, the cases on the point being somewhat conflicting. In the case of *Ex parte Gibbons* (*s*) it was held, that the bankrupt was not discharged by the then existing law which for this purpose is closely analogous to the present, on the ground that bail are not creditors, and that, besides, in contemplation of law the defendant is in their custody from the moment they become bail for him.

The last-mentioned ground has been distinctly overruled by the case of *Ex parte Leigh* (*t*), which case seems inconsistent with the former in the main question also. The present writer inclines to believe that substantially the latter case lays down more truly the meaning of the enactment. If the debtor be held not in the custody of his bail, then his arrest by his bail is still an arrest for debt on the original action, the bail only acting in this view as agents for the plaintiff, and so an arrest from which the bankrupt is protected.

In view of the difficulty which arises on cases of this kind, if the defendant in an action becomes bankrupt, the court in which the action is brought will enlarge the time for him to surrender in discharge of his bail until he has passed his last examination (*u*).

It has been held, under sect. 162 of the Act of 1861, that a person in custody on a *capias* to hold to bail is "in custody in respect of a debt, claim or demand" within the 100th section of that act, and that he is entitled to be discharged under the 162nd section of the same act, upon his order of discharge taking effect (*v*).

A trader debtor, being summoned on an affidavit of debt in the

Instances.

Extends (*semble*) to arrest on warrant for non-payment of poor-rates.

Does not to retaking of prisoner by marshal of Queen's Bench.

Whether it includes case of bankrupt taken by bail in discharge of bail, *quære*.

Ex parte Gibbons.

Ex parte Leigh.

Semble, sect. 112 covers case of arrest by bail.

Time to surrender in discharge of bail enlarged to meet such case.

Person in custody on *capias* ad resp. entitled to be discharged under sect. 162 of the Act of 1861.

Ex parte Oldaker.

(*p*) *Ex parte Bury*, 7 Jur. 406; 3 M., D. & D. 309.

(*q*) *Ex parte Wilby*, 29 L. T. 331.

(*r*) See *Anderson v. Hampton*, 1 B. & Al. 308; and see *Ex parte Johnson*, 14 Ves. 36.

(*s*) 1 Atk. 238.

(*t*) 1 Gl. & J. 264.

(*u*) *Stead v. Yates*, 2 B. & Adol. 272.

(*v*) *Ex parte Gaskell*, 11 L. T., N. S. 685.

CHAP. XVII.

Bankrupt, voluntarily surrendering in discharge of bail, not entitled to release under sect. 112.

Ex parte Oldaker considered.

Discharge under sect. 162 of the Act of 1861 releases from custody for costs of action brought after bankruptcy, for debt due before.

Bankrupt may claim immediate discharge under sect. 112, although fiat open to objection.

Court of Bankruptcy, entered into a bond with sureties, conditioned for payment of the debt, if recovered in an action at law, or for the surrender of the debtor in execution. The creditor recovered judgment; and a fiat issued on the petition of another creditor against the trader who obtained his protection under it, and then surrendered in discharge of his bail in the action: it was held, that the protection did not entitle the bankrupt to be released from the custody to which he had voluntarily surrendered himself, but that he must be left to his ordinary legal remedies (*w*).

This case, however, turned much on its particular circumstances. The debtor had already applied to Mr. Justice Patteson for his discharge substantially on the same grounds upon which he had made the application to the Vice-Chancellor. The Vice-Chancellor held only that he was not so clearly of opinion that the debtor was entitled to his discharge as to order such discharge summarily. The ground of the decision, too, was the voluntary nature of the surrender, which could not be construed as an arrest, for the bail-bond was not given on process in the action, but on summons to the Court of Bankruptcy, on which no arrest was possible.

Where the original debt is proveable under the bankruptcy and is therefore barred by the order of discharge, and the bankrupt is in custody for the costs of an action brought after the bankruptcy, but in respect of the original debt, he is entitled to his release immediately upon obtaining his order of discharge under the 162nd sect. of the Act of 1861, unless "good reason" be shown to the contrary; and the fact that a judge at chambers, to whom he had applied for his release, had declined to interfere was not a "good reason" for withholding from him his statutory right, under sect. 162, to be released (*x*).

The sheriff is justified in immediately discharging a person arrested for debt, or on an escape warrant, on his producing a summons, as required by the statute, to the officer who arrests him, and on giving him a copy thereof. In such a case the validity of the bankruptcy is immaterial; it is sufficient if the party be bankrupt *de facto* although not *de jure* (*y*). It was much discussed in the case of *Lloyd v. Harrison* (*z*), whether the production to the sheriff of the certificate of registration of a deed, purporting to be

(*w*) *Ex parte Oldaker*, De G. 591.

(*x*) *Ex parte Lloyd, re Lloyd*, 11 L. T., N. S. 251.

(*y*) *Norton v. Walker*, 3 Exch. 480; 6 D. & L. 204; 18 L. J., Exch. 234.

(*z*) 13 W. R. 602.

registered within the 192nd section of the Act of 1861, was a good defence to an action for an escape against the sheriff, who had on such production discharged the debtor, it being discovered afterwards that the deed was invalid within the 192nd section, and it was held (Cockburn, C. J., dissent.), that the certificate of registration, although by reason of the invalidity of the deed it conferred neither actual protection on the debtor nor jurisdiction on the Court of Bankruptcy over the debtor's estate, operated nevertheless to excuse the sheriff.

Where a bankrupt, not being in custody at the time of his surrender, obtained his protection from arrest, but was immediately after arrested, although this arrest was declared illegal and he was ordered to be discharged, yet in the meantime, and before his discharge, detainers were lodged against him; it was held that he was protected from all detainers lodged against him after his arrest (a), and this is so now; but formerly, it was held that if he was in custody at the time of his surrender he could not be discharged by the protection of the court from the subsequent detainers (b). This, however, is now also otherwise in a case of bankruptcy under the additional words in the 112th section of the Act of 1849.

Bankrupt protected from arrest is protected against all detainers lodged against him.

By 12 & 13 Vict. c. 106, s. 112, where any person who has been adjudged bankrupt, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the court may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit: provided always, that the court shall not order such release where it shall appear by any judgment, order, commitment or sentence under which the bankrupt is in prison or in custody, or by the record or entry of any such judgment, order, commitment or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition

Sect. 112 covers case, where bankrupt in custody at time of surrendering.

Exceptions in cases of debt contracted by fraud, &c.;

(a) *Ex parte Hawkins*, 4 Ves. 691; *Ex parte Ross*, 1 Rose, 260.

(b) *Ex parte Goldie*, 2 Rose, 343; 1 Mer. 176.

CHAP. XVII.

but no rights of creditors to be affected, except right to detain in prison.

Except in cases specially excepted in sect. 112, the granting protection, &c. to be in discretion of court, subject to right of appeal.

Cases in which court will withhold protection.

for adjudication of bankruptcy: provided also, that such release shall in nowise affect any rights of the creditor at whose suit the bankrupt may be in prison or in custody against the bankrupt, except the right of detaining him in prison or in custody whilst protected from imprisonment by the order of the court.

Under this section, in case the bankrupt is in custody, at the time of his obtaining protection, under any circumstances other than those specially excepted, the granting or withholding protection is altogether in the discretion of the court, subject of course to an appeal to the Court of Appeal. The court will in general grant such protection after the choice of assignees if they do not oppose, and there be no reason to suppose that an improper use will be made of it, but it has in many instances refused it where the circumstances laid the bankrupt open to the suspicion of a fraudulent intent. Thus, where he had been arrested on mesne process, the commissioner, on an affidavit that it was believed he was about to quit the country, and had in vain appealed to the judge of the common law court at chambers for his discharge, refused to grant him protection from that arrest (*c*); or again, where a bankrupt was in custody under similar circumstances and had not applied to the judge at common law (*d*), and the court has refused to vary the amount of bail except with the consent of the detaining creditor (*e*); and discharge from arrest was refused where the bankrupt had actually been proved guilty of gross fraud, though it did not appear by the proceedings in the action on which he was in custody that that particular debt was contracted by fraud, in which latter case, indeed, the commissioner would have had no discretion to grant protection. So, where it was shown that the bankrupt had traded and incurred debts under several names, being at the time an uncertificated bankrupt under another name, the court refused to grant protection (*f*). So also, where it appeared that the bankrupt had incurred debts by false representations, the court refused to order his release, except upon his giving security to the amount of 300*l.* for his appearance at the sitting for his last examination (*g*).

Where the bankrupt was in contempt under a former bankruptcy for not passing his last examination (*h*), the court refused to discharge him from custody.

(*c*) *Ex parte Woodroffe*, 28 L. T. 37; and since the Act of 1861, *Re Waugh*, 9 Jur., N. S. 1303; 9 L. T., N. S. 466; *Re Dyer*, 12 W. R. 138; *Re Mare*, 11 W. R. 304; *Re Godoy*, 11 W. R. 988; *Re Monteiro*, 12 W. R. 671.

(*d*) *Re Rider*, 6 L. T., N. S. 108.

(*e*) *Re Monteiro*, *supra*.

(*f*) *Ex parte Parkins*, 32 L. T. 51.

(*g*) *Re Brown*, 34 L. T. 55.

(*h*) *Ex parte Welch*, 5 L. T., N. S. 463.

Protection
refused,
where.

So, where the bankrupt had received payment for a horse sold by him under a warranty to be returned if not approved within a given time, and the horse not answering the warranty being returned the bankrupt neglected to return the purchase money, and compelled the creditor to sue and take him in execution; it was held, that the debt being contracted by fraud, the bankrupt was not entitled to his release (*i*). So, where he had, only a few days before presenting his petition, denuded himself of all his property (*k*), the court refused to release him.

So, where a feme covert had traded as a feme sole, and incurred the detaining creditor's debt by a representation that she was unmarried, the court refused to release her (*l*).

So, where the bankrupt is in custody for damages and costs for an assault (*m*), or for breach of promise of marriage (*n*), by the words of the statute the court has no jurisdiction to release him; and it has been held that it has no jurisdiction to order his release from custody under an attachment for costs incurred as co-respondent in a suit for divorce (*o*). So, where a bankrupt was in custody for damages and costs in a case where he had done acts tending to injure the plaintiff in his business, although they did not strictly amount to a "slander," the court refused to order his release except on bail (*p*).

So, where he had arrested his creditor on an attachment, without allowing as a set-off the sum owed by himself and for which he was arrested, the court refused to discharge him immediately, when made a bankrupt on his own petition in formâ pauperis (*q*). A day having been fixed for passing the bankrupt's last examination, and he having been in the interval arrested on a judgment in an action for slander and imprisoned, the commissioner thought that, as, if the bankrupt had been in custody at the date of the adjudication he could not have ordered his discharge, in like manner being arrested after his protection had expired, he was equally disentitled to be released, and refused the order to release him. He however obtained it on application to a judge at chambers (*r*).

The court, under the former law, in general, refused to order protection in cases where it was discretionary, until assignees had been chosen, unless indeed with the consent of the petitioning and

(*i*) *Re Jones*, 5 L. T., N. S. 403.

(*k*) *Ex parte Stiff*, 7 L. T., N. S. 290.

(*l*) *Ex parte Ladd*, 9 L. T., N. S. 397.

(*m*) *Ex parte Preston*, 5 L. T., N. S. 89.

(*n*) *Re Simpson*, 7 L. T., N. S. 290.

(*o*) *Ex parte Green*, 5 L. T., N. S. 527.

(*p*) *Ex parte Johnson*, 7 L. T., N. S. 135.

(*q*) *Ex parte Hicks*, 8 L. T., N. S. 441.

(*r*) *Ex parte Miller*, 5 L. T., N. S. 367.

CHAP. XVII.

Proper time for discharge under protection, after choice of assignees;

but court will in discretionary cases release before choice, security being given.

Discharge refused under Act of 1861 before bankruptcy advertised, where bankrupt himself petitioner.

Practice in this, not uniform.

Re Morecraft.

the detaining creditor, or where there might be great danger to the estate or to the health of the bankrupt from the imprisonment.

As the object of the bankrupt's discharge from custody is to enable him to assist his assignees in discovering and getting in the estate, the proper time for the application is not until after the choice of assignees (*s*). The court will, however, in discretionary cases, release a bankrupt from arrest on final process, even before the choice of assignees, on sufficient security being given by him (*t*). For the same reasons the court has refused, since the Act of 1861, to order a bankrupt, adjudicated on his own petition, to be discharged till after the advertisement of the bankruptcy (*u*); but its practice in this respect has not been uniform (*v*).

Thus it has ordered a bankrupt's release, who was adjudicated on his own petition immediately on his filing his accounts, within the three days required by section 93 of the Act of 1861, the detaining creditor not opposing (*x*), and in spite of allegations, not, however, supported by proof, that the detaining creditor's debt was contracted by fraud (*y*). But the bankrupt having omitted a debt from the statement of accounts, the court refused his release until he should account for the omission and rectify the statement for which leave was given (*z*). Where the debt of the execution or detaining creditor arose out of a gambling transaction on the part of the bankrupt, the court refused to order his release until after the first meeting of creditors (*a*). The court has often refused to release a debtor adjudicated on his own petition, where it considered him not properly or not sufficiently described in his petition (*b*). It has sometimes under such circumstances directed an amendment of the petition and refused his release until the petition has been amended (*c*); sometimes it has refused the release until after the choice of assignees (*d*). Sometimes it has refused leave to amend, but dismissed the petition with liberty to file a new one with a full and proper description, and under that to apply again for discharge (*e*). Where the release is discretionary the court will not always release the bankrupt, even upon the choice of assignees; but will consider what is most likely to benefit the creditors, and, if asked, will give time to the assignees to investigate his

(*s*) *Re Robinson*, Fonb. 205; *Re Bradley*, 30 L. T. 139; *Re Steward*, 32 L. T. 303.

(*t*) *Ex parte Moss*, 11 L. T., N. S. 252.

(*u*) *Re Evans*, 5 L. T., N. S. 213; *Re Chauncey*, 5 L. T., N. S. 238; *Re Osborne*, 5 L. T., N. S. 215.

(*v*) *Re Franks*, 5 L. T., N. S. 237, and cases next cited.

(*x*) *Re Glass*, 5 L. T., N. S. 214.

(*y*) *Re Morecraft*, 5 L. T., N. S. 238.

(*z*) *Re Barwick*, 5 L. T., N. S. 238.

(*a*) *Re Knight*, 5 L. T., N. S. 237.

(*b*) *Re Vacher*, 9 L. T., N. S. 205; *Re Hall*, 7 L. T., N. S. 725; *Re Baker and Adean*, 5 L. T., N. S. 369; *Re Hunter*, *ib.*

(*c*) *Re Baker and Adean*, *supra*.

(*d*) *Re Hunter*, *ib.*

(*e*) *Re Hall*, 7 L. T., N. S. 725.

affairs (*f*). In one case the court seemed to think that, in a matter which was discretionary, it ought not to use its discretion in favour of the prisoner and in derogation of the rights of the creditor, unless some positive benefit were likely to accrue to the general body of the creditors by the bankrupt's release (*g*); but if such benefit will, in the opinion of the creditors' assignee, result and there be not in the particular circumstances of the case sufficient to outweigh these advantages, the court will order the release unconditionally (*h*).

CHAP. XVII.

Discretion to grant discharge not exercised in derogation of creditors' rights.

In a recent case, in which a bankrupt applied for an order of discharge, it appeared on the application that on the 16th August he had realized a sum of money by the sale of the goodwill of his business, and on the 22nd he filed his petition for adjudication, not showing any assets: it was held, that such a petition must be dismissed, as having been presented in fraud of the statute (*i*); but as to the correctness of the decision in this case, doubts may, it is conceived, be reasonably entertained.

Bankrupt's petition for adjudication, showing no assets, dismissed as in fraud of statute, *sed quære*.

Where the court has discretion to release, it has been held that a vexatious defence by the bankrupt to an action is not ground for refusing to release him (*j*), but the contrary has also been held (*k*); nor is it ground for a refusal to release that he is in custody for costs in an action in which he was plaintiff and unsuccessful (*l*); nor does the fact that preferential payments were made by him on the eve of bankruptcy when he was utterly insolvent furnish such a ground (*m*): and any attachment for nonpayment of money merely will bring the debtor within the words of the 112th section as "in prison or in custody for debt" (*n*).

What are not grounds for refusing to release.

To take away the discretion of the commissioner under this section, the excepted offences must "appear by the judgment, order, &c., under which the bankrupt is in custody, or by the record of such judgment, &c., and the pleadings or proceedings previously thereto," and it is not competent for the detaining creditor to examine the bankrupt, in order to show that his debt has been incurred by fraud or breach of trust committed against

Discretion of commissioner not limited by excepted offences, unless they appear on the judgment, &c. under which bankrupt in custody;

(*f*) *Ex parte Burslem*, 9 L. T., N. S. 520; *Ex parte Mathews*, 10 L. T., N. S. 166.

(*g*) *Ex parte Butler*, 9 L. T., N. S. 660.

(*h*) *Ex parte Strousberg*, 10 L. T., N. S. 104.

(*i*) *Re Peacock*, 14 W. R. 49.

(*j*) *Re Barker*, 5 L. T., N. S. 368; *Re*

F.

Welsh, 9 L. T., N. S. 202.

(*k*) *Re Johnson*, 9 L. T., N. S. 203.

(*l*) *Re Simpson*, 7 L. T., N. S. 290.

(*m*) *Re Hart*, 4 L. T., N. S. 369.

(*n*) *Ex parte Skinner*, 7 L. T., N. S. 136; *Re Simpson*, *supra*; see also *Ex parte Paynter*, 6 L. T., N. S. 510.

CHAP. XVII.

some person not a party to the record in the action, which has led to his committal, nor can he offer evidence of the fact, except by producing the record, &c., or detainer (*o*).

nor where bankrupt in custody under judgment for assault committed by his wife.

The section does not apply to limit the discretion of the court in respect of a judgment obtained in an action for assault committed by the bankrupt's wife (*p*); nor does it apply to a case where an unsuccessful plaintiff in an action for libel, slander, &c., is in arrest for costs on a judgment of nonsuit, but only to the case of a defendant (*q*).

Discharge must be unconditional, where bankrupt not in custody at time of order.

In other cases, that is to say, where the bankrupt was not in custody at the time of his protection, it has been held, that the discharge must be unconditional, and that the court could not impose terms before granting it (*r*). It has been supposed that this case also rules that the court has no jurisdiction to order costs to be paid out of the bankrupt's estate on his application for his discharge, but the case rightly viewed does not determine any such proposition: it does rule that such an order for costs *cannot* be made a *condition* of the discharge, and in the particular case ought not to have been made, and in general, in similar cases, ought not to be made at all, because the discharge is *ex debito justitiæ*, and in any case the general body of creditors ought not to be prejudiced by the wrongful act of one; but the jurisdiction of the court to make an absolute order for payment of costs out of the estate where the assignees are before the court, and where the circumstances would render such an order proper and just, even though the case be that of a bankrupt applying for his own discharge from custody under the 112th sect. of the Act of 1849, would seem to be clear from the 249th section of that Act and the 213th sect. of the Act of 1861, provided the order be not made a condition of the discharge (*s*). In cases within the rule just mentioned, where the bankrupt is in custody at the time of his surrender, as conditions may be imposed on his discharge, of course conditions as to costs may be imposed as well as any others. The detaining creditor has of course a right to be heard in opposition to a bankrupt's application for his release (*t*).

Order for costs in such case, not to be made a condition of discharge.

Where bankrupt in custody, when order of discharge made, conditions as to costs may be imposed.

Where a bankrupt had contracted debts without reasonable prospect of being able to discharge them, and had no assets

(*o*) *Re Gill*, 30 L. T. 106; *Re Jacobs*, 9 L. T., N. S. 204.

(*p*) *Larkin v. Marshall*, 1 Lowndes, Max. & Poll. Pr. Cas. 186; 19 L. J., Exch. 161; 14 Jur. 46.

(*q*) *Re Neale*, 11 W. R. 441.

(*r*) *Ex parte Helsby*, M. & Bl. 79.

(*s*) See also *Watson v. Bodell*, 14 M. & W. 57; 14 L. J., Exch. 281; 9 Jur. 626.

(*t*) *Ex parte Preston*, 5 L. T., N. S. 89.

except contingent interests, which he might or might not realize, according to the option of third parties, the court refused to grant an absolute order of discharge, without attaching such conditions as to the payment of the debt out of future earnings or after-acquired property as might seem just and reasonable (*u*).

Notice of an application for a bankrupt's release should be served on the solicitor of the detaining creditor, as well as on the detaining creditor himself (*v*); and where the detaining creditor resided in Ireland, and the adjudication was in London, six days' notice was held necessary, four days being sufficient when the creditor resided in a distant part of England (*x*). It has been held, that where the bankrupt was in arrest for nonpayment of calls under a winding-up order, the creditors' representative as well as the official manager had a right to be heard against his release (*y*). If the detaining creditor prove his debt, he cannot oppose the release of the debtor (*z*). The proper course for a creditor is, to apply to prove at the same time that the order for the debtor's release is made, and withdraw his opposition to the release.

Notice of application for release to be served on detaining creditor and also on his solicitor.

Creditors' representative as well as official manager of company to be heard against bankrupt member's release.

It has been held in a late case that an order of discharge under sect. 159 of the Act of 1861, cannot be rescinded except upon application under sect. 168 of that Act (*a*); and it has also been recently decided that an order of protection under sect. 6 of the 7 & 8 Vict. c. 70 (the Private Arrangement Act), does not operate to protect the debtor's goods from seizure under a *fi. fa.*, upon a judgment obtained before the date of the petition (*b*).

Order of discharge under sect. 159 of the Act of 1861, not rescinded except under sect. 168.

The Act of 1861 gives the bankrupt privilege from arrest while coming to surrender, and this word "coming" is construed liberally. Thus, where a bankrupt, upon receiving the commissioner's summons, delivered up his keys and effects to the messenger, and promised to submit to the directions of the act, but was arrested at his house on the first day appointed for the surrender, the Lord Chancellor upon petition discharged him (*c*). So, where on his way to surrender he had deviated from the direct road, and was arrested during that deviation, still he was holden entitled to his privilege (*d*). But where the bankrupt came from Holland within the time, intending to surrender on the last day appointed for that

"Coming" to surrender construed liberally. Instances.

(*u*) *Re Wemyss*, 12 L. T., N. S. 507.

(*v*) *Re Pellatt*, 5 L. T., N. S. 853.

(*x*) *Ex parte Jennings*, 11 W. R. 683.

(*y*) *Re Pepper*, 11 W. R. 748; 8 L. T., N. S. 553.

(*z*) *Re Eaton*, 12 W. R. 640; see also

Election by Proof.

(*a*) *Re Baynham*, 14 W. R. 210.

(*b*) *Davis v. Percy*, Law Rep., C. P. 1, p. 256.

(*c*) *Ex parte De Fries*, Davies, 163.

(*d*) *Ogle's case*, 11 Ves. 556.

CHAP. XVII.

purpose, but finding the time had been enlarged, he deferred surrendering until the expiration of the enlarged time, and in the meantime was arrested; the court refused to discharge him, saying, that the privilege in this case, like that of witnesses attending a court, must be confined to a reasonable time *eundo et redeundo*, and must not be extended beyond it (*d*).

The privilege also continues during the whole of the last day appointed for the surrender, although the bankrupt may have passed his examination at an early hour on that day (*e*); and in the same manner it continues to the end of the day to which the examination is adjourned, if adjourned to a specific day (*f*), but not when the last examination is adjourned *sine die* (*g*); but if adjourned *sine die* (*h*), then by 12 & 13 Vict. c. 106, s. 162, the bankrupt shall be free from arrest or imprisonment for such time as the commissioner shall, by indorsement upon such summons as aforesaid appoint, with like penalty upon any officer detaining such bankrupt. The protection continues whilst the party is actually in attendance on the commissioner, or going or returning from the sitting (*i*): but if, after the expiration of the day limited for surrender, the bankrupt obtains an order to enlarge the time for surrendering, he enjoys no privilege from arrest during the enlarged time (*k*), unless whilst in actual attendance at, or in going to, or returning from, the meeting (*l*). A commitment of the bankrupt does not operate as an adjournment *sine die*, with a protection; so where the bankrupt, on the day appointed for his last examination, was committed by the commissioners for not answering to their satisfaction, a detainer lodged against him, after a day fixed for his being brought up, was held legal (*m*).

And, under 6 Geo. 4, c. 16, it has been held, that the bankrupt derived the protection of 6 Geo. 4, c. 16, s. 117, from the statute, and not from the commissioners' certificate indorsed upon his summons (*n*). And therefore, where the commissioners adjourned the bankrupt's last examination, the bankrupt was holden to be privileged from arrest in the mean time, although the commissioners had neglected to indorse the adjournment upon his sum-

If last examination adjourned *sine die*, bankrupt so long free as commissioner by indorsement on summons appoints.

After expiration of time for surrender, bankrupt has no privilege from arrest, during enlarged time, except *eundo et redeundo*.

A commitment does not operate as an adjournment *sine die*, with protection.

(*d*) *Kenyon v. Solomon*, 1 Cowp. 156.

(*e*) *Ex parte Donlevey*, 7 Ves. 317.

(*f*) *Simpson's case*, Buck, 424; and see *Davis v. Trotter*, 8 T. R. 476.

(*g*) *Ex parte Woods*, 1 G. & J. 75.

(*h*) See *Claughton v. Leigh*, 2 D. & R. 831; 1 B. & C. 652; *Ex parte Woods*, 1

Glyn & J. 75.

(*i*) *Ex parte Ross*, 1 Rose, 260; *Ex parte Jackson*, 15 Ves. 116.

(*k*) *Anon.*, 15 Ves. 1.

(*l*) *Ex parte Hawkins*, 4 Ves. 691.

(*m*) *Ex parte Weight*, 2 Glyn & J. 202.

(*n*) *Ex parte Leigh*, 1 Glyn & J. 264.

mons (*o*); but that the protection of sect. 118 (*i. e.* in case of adjournment *sine die*) was derived from the indorsement of the commissioners; and if the last examination is adjourned *sine die*, and the commissioners do not indorse a protection on the summons, the bankrupt is not protected from arrest, although, after such adjournment, he obtains a new appointment for further examination (*p*); and these decisions will apply to the 12 & 13 Vict. c. 106, ss. 112, 162.

If last examination adjourned *sine die*, bankrupt not protected unless protection indorsed.

The statute allows the bankrupt protection even after his examination is finished, for such further time as the court from time to time by indorsement on the summons of the bankrupt shall think fit, in which case also the protection is derived solely from the indorsement of the commissioner, and if no time is indorsed there is no protection; but the circumstance of the bankrupt, on the recommendation of the commissioner withdrawing his application for a certificate, will not render void an interim order for protection previously granted by the court to the bankrupt (*q*).

Interim order of court for protection, valid, though bankrupt withdraws application for certificate.

On an application by a bankrupt for his discharge from custody, under the 12 & 13 Vict. c. 106, s. 112, an office copy of the judgment must be produced to show that the imprisonment is not by reason of the matters excepted from the operation of that section (*r*).

On application for discharge, under sect. 112, office copy of judgment to be produced showing cause of imprisonment.

If a bankrupt be arrested, after his protection under the commissioners' order, indorsed upon adjournment *sine die*, has expired, the court has no jurisdiction to order his discharge from such arrest, until he becomes entitled to his order of discharge (*s*).

Protection was formerly, under the power last mentioned, constantly granted to a bankrupt, even though his certificate was suspended; and there seems nothing in the Act of 1861 to limit the power of the commissioner to grant protection in cases where he is empowered to suspend the order of discharge.

Protection granted, even when certificate suspended.

It has been held that, where the allowance of the certificate is suspended and protection granted, this protection does not avail against debts incurred after the bankruptcy, as this would in effect place the bankrupt in a better position than if the certificate had been allowed (*t*).

Where certificate suspended, no protection against debts subsequent to bankruptcy.

The decision in this case no doubt furthers what was probably

(*o*) *Price's case*, 3 Ves. & B. 23.

(*r*) *Re M'Leod*, Fonb. 27.

(*p*) *Ex parte Bailey*, 3 Dea. 43; 3 Mon. & A. 408.

(*s*) *Re Lloyd*, 12 W. R. 968.

(*q*) *Ex parte Benn*, 10 Jur. 20.

(*t*) *Grace v. Bishop*, 11 Exch. 424; 25 L. J., Exch. 58.

CHAP. XVII. the intention of the legislature in giving the power in question to the commissioners, but it is difficult to reconcile it with the expressions of the act of parliament, for in the 162nd section the words are the same as in the 112th, "the bankrupt shall be free from arrest or imprisonment," and the 113th section manifestly applies to both species of protection; the rule set up by the decision in question, therefore, would be a desirable one had it been so enacted, but seems to be rather in the nature of legislative than of judicial determination.

Bankrupt has, at common law, like privilege as witnesses, parties, &c.

But besides the privilege given by this statute, the bankrupt also enjoys at common law the same privilege that parties and witnesses, &c., do in all other cases. And therefore, where a bankrupt was arrested as he was returning from the hearing of his petition for leave to surrender, he was holden to be privileged, and was discharged (*u*). So, where a bankrupt was attending a meeting of the commissioners to declare a dividend several years after his final examination, having been verbally directed by the commissioners to do so, it was held that he was privileged *eundo, morando et redeundo* (*x*).

Former practice to make order for discharge, upon arresting creditor, then upon officer.

It was formerly held that, in order to obtain his discharge from custody when privileged, the bankrupt might petition (*y*) or move the court upon notice to the arresting and detaining creditors; the order was made upon the arresting and detaining creditors in the first instance (*z*), and if they disobeyed, it was then extended to the officer (*a*); the reason of this was, because the discharge of the prisoner by the party, though under the order of the court, yet barred the party from any action for an escape, and the sheriff was thus more completely protected against all annoyance than if the order were only made on the officer, in which case the only answer the sheriff would have to such an action would be by a bill for injunction against the plaintiff from proceeding in the action. Disobedience of the party or officer to the order was punishable as a contempt (*b*).

Disobedience of party or officer, formerly a contempt.

This practice was, however, all settled under the ancient constitution of proceedings in bankruptcy, when they were held under commission from the great seal: the contempt was a contempt of

(*u*) *Ex parte Jackson*, 15 Ves. 116.

(*x*) *Arding v. Flower*, 3 Esp. 117; 8 T. R. 534.

(*y*) *Anon.*, 1 Rose, 230; see *Ex parte Byne*, 1 V. & B. 316.

(*z*) *Anon.*, 15 Ves. 1; *Ex parte King*,

7 Ves. 312.

(*a*) *Ex parte Byne*, *Ex parte King*, supra; see also *Ex parte Donlevey*, 7 Ves. 318.

(*b*) *Ex parte Kerney*, 1 Atk. 53; *Ex parte King*, 7 Ves. 312.

the great seal, and the order for the discharge of the prisoner was an order by the Lord Chancellor or Lord Keeper, to which any subject of the realm was amenable. The practice may also have continued while the Court of Review existed, for the powers of that court were granted by reference to the jurisdiction of the Chancellor, and all the powers which he had in any matter relating to bankruptcy were given to that court: under the Act of 1849, however, the jurisdiction is more limited, and in general extends only to the bankrupt, the assignees, and to other persons only when submitting to the court (c). So it has been held, that since this act the court cannot issue an injunction to a creditor to restrain him from proceeding at law, even though he has proved (d); but this seems closely analogous to and even stronger than the point just mentioned, for the creditor arresting or detaining the bankrupt is rarely, if ever, a creditor who has proved, and he has in general in no respect submitted to the court: the question, therefore, is, has the court any jurisdiction in general to order him to discharge the bankrupt, even when it has granted its protection to the bankrupt? In the special case treated of in the 112th section before cited, viz., where the bankrupt is in prison or custody at the time of his coming up to surrender and of his obtaining his protection, the power to order his release is given to the court in express terms: does it, however, exist, where not expressly given? It would seem not, *Ex parte Johnson* (e) having apparently decided that the Court of Bankruptcy cannot order the release of a debtor arrested on a *ca. sa.*, save in the cases specifically set out in the 112th section of the Act of 1849.

CHAP. XVII.

Contempt of order of discharge, contempt of great seal, under ancient proceedings in bankruptcy.

This principle probably continued under Court of Review.

Under the Act of 1849 jurisdiction limited to bankrupt's assignees and persons submitting to court.

Quære, whether court has now jurisdiction to order detaining or arresting creditor to discharge bankrupt.

Ex parte Johnson.

This question is, since the passing of the Act of 1861, become one of more practical importance than formerly, for it is by the 198th section of that act provided, that, on the registration of a deed of arrangement within the 192nd section of the same act, a certificate of such registration shall be given to the debtor, and "shall be available to the debtor for all purposes as a protection in bankruptcy."

This question of more importance under the Act of 1861, sects. 198 and 192.

This provision, it is supposed, must mean that the debtor is privileged from arrest or detainer in the same way as he would be, if, being a bankrupt, he had obtained a protection from the commissioner by indorsement on his summons, and was arrested

(c) See sect. 12 of Act of 1849, and *Jurisdiction of Court*.

(d) *Ex parte Boucer*, Fonb. 157.
(e) 10 L. T., N. S. 848.

CHAP. XVII.

Quære, whether Court of Bankruptcy has jurisdiction, under sect. 198 of the Act of 1861, to discharge from process of superior court.

Grounds for not admitting the jurisdiction.

during the time covered by the indorsement, but such protection, afforded by the certificate of registration (under sect. 198), is not, it would appear (*d*), to be understood to extend to detainers under former arrests, but only to those made subsequently to the registration. Doubts have been entertained whether the Court of Bankruptcy has any jurisdiction under this clause, (sect. 198 of the Act of 1861,) to discharge from the process of a superior court (*e*). We have been informed that in more than one case unreported, besides the reported case cited below (*f*), the commissioners have refused to exercise any such jurisdiction, if, indeed, it exists; while it has been intimated by the Court of Appeal, in some of the cases below cited, that the jurisdiction does exist; the Court of Exchequer, meanwhile, in one of these cases, seems to have hinted an opinion, that the matter is, at most, doubtful, a doubt which the late Lord Chancellor seemed also to entertain (*g*). The question hardly appears to have been fully argued in any of the cases mentioned below, those in which the point was actually decided having apparently been put on very insufficient or even incorrect grounds.

In the first place, the distinction above taken between the case in which the statute is express, giving the court power to discharge, and the other cases where no court is mentioned as the one to discharge, never seems to have been brought to the notice of any court which has decided in favour of the jurisdiction of the commissioner. There seems good reason why, when a bankrupt in custody obtains his protection, being brought up under the warrant of the Court of Bankruptcy, power should be given, as it is, to the court which grants the protection, then and there to order the discharge, thus saving the time, trouble and expense which would otherwise be necessary of making another application to another court in order to give full effect to the protection granted, but this reason exists in no other case, and as the power is not expressly and in terms given to the Court of Bankruptcy in those other cases, we must look to the principle of the thing, to see if it is impliedly given. If it be not a power necessary for the purposes of the act it does not seem to be conferred either by the 6th section of the Act of 1849, or the 1st section of the Act of

(*d*) *Ex parte Johnson*, 10 L. T., N. S. 848.

(*e*) See *Penhall v. Littlejohns*, 1 N. R. 292; see also *Re Littlejohns*, lb. 168; *Re Windsor*, 7 L. T., N. S. 535; 1 N. R. 230;

Re Castleton, 31 L. J., Bcy. 71; *Re Shettle*, *Ex parte Godden*, 32 L. J., Bcy. 37; 1 De G., J. & S. 260.

(*f*) *Re Harwood*, 7 L. T., N. S. 171.

(*g*) *Re Smith*, 10 L. T., N. S. 551.

1861, while, as we have already remarked, it seems, by implication, denied by the 12th section of the Act of 1849.

But, in the next place, can it be said to be necessary? In support of the affirmative it is urged that the privilege is analogous to that of a witness, and that it is for the furtherance of justice that the bankrupt should be at liberty to attend court and to assist his assignees in getting in his estate. The answer is, that as to attendance on the court, the latter has undoubtedly the power to cause the bankrupt to be brought up, and if he is in custody when it grants him his protection, we have seen it can discharge him; in any case, such a privilege is no higher than the privilege of a witness subpoenaed to attend at a trial, say at a court of quarter sessions, yet a witness in such case arrested under the writ of a superior court cannot be discharged by the inferior (*h*), he must apply to the court under whose writ he is arrested or else take his remedy by habeas corpus.

As to the liberty of the bankrupt to assist his assignees there is not the slightest pretence for saying that this may not as conveniently be attained by application to the court which ordered the arrest or by habeas corpus, as by application to the Court of Bankruptcy; and it is clearly for the convenience of the public in the administration of the law, that as long as a multiplicity of courts does exist, those courts should confine their jurisdiction to the proper subjects of it, and should not conflict with one another's authority, nor prevent, the one, the execution of the other's order.

It was, indeed, ruled in the case of *Plumer v. MacDonald* that a person arrested under an order of the Court of Chancery while going to attend the Court of Bankruptcy, on the hearing of a petition which he had filed there, ought to apply to the Court of Bankruptcy for his discharge, and the Court of Chancery refused to make the order (*i*). This was while the Court of Bankruptcy remained under its old constitution, the Vice-Chancellor holding all the jurisdiction of the great seal, and some authorities were cited tending to the same point; but the decision just cited is clearly at variance with the received rule of practice in most of the courts (*j*), which, even though the Court of Bankruptcy had concurrent jurisdiction, have not hesitated themselves to interfere and stay

*Plumer v.
MacDonald.*

(*h*) *Wilson v. Sheriffs of London*, Brownl. 15; 1 P. 15; *Clerk v. Molyneux*, T. Raym. 100; 1 Lev. 159; 1 Siderf. 269; 1 Keb. 845.

(*i*) *Plumer v. MacDonald*, 11 Jur. 899.

(*j*) *Bauerselman v. Longlands*, 13 W. R. 79; *Penhall v. Littlejohns*, 1 N. R. 292; see also *Hayne v. Robertson*, 16 C. B. 554; *Chauvin v. Alexandre*, 31 L. J., Q. B. 79; 8 Jur., N. S. 262; 10 W. R. 248.

CHAP. XVII.
Re Smith.

their own process. In a late case in which the decision in *Plumer v. MacDonald* was cited, the Lord Chancellor nevertheless doubted of his jurisdiction to order a debtor's release who had executed a deed under the 192nd section and was notwithstanding arrested; at least while the validity of the deed was in dispute, and refused to entertain any question as to the validity of the deed, unless the creditor would consent, in the event of his deciding in its favour, to release the debtor from custody (*k*); indeed it seems to be the more regular course where executing the process of one court involves a contempt of another, rather to apply to the court ordering the process to carry its own order than to make application to the court whose privilege is invaded to support its dignity by ordering a counter contempt of the court issuing the process, viz., by directing a breach of the order of that court by its own officers; this latter course leading to a most unseemly conflict of jurisdiction and placing the officers of the court in a very false position. Where no court is mentioned as the one to grant a discharge, the ordinary courts of justice of common resort are naturally presumed to be the courts to afford justice in each particular case. It may be further urged that the sheriff would clearly be liable for an escape if it so happened that the commissioner's order were not a sufficient authority for him to discharge the prisoner, and the right of enjoining a creditor, who has not proved, from suing the sheriff for an escape, is one which would seem rather beyond the jurisdiction of the Court of Bankruptcy, how ever far one might be inclined to stretch it. If the court, which ordered process to issue, ordered it to be stayed, it seems beyond doubt that the sheriff would be discharged. In the last cited case, *Re Smith*, it was also decided, that the Court of Appeal sitting in Bankruptcy cannot indirectly hear an appeal from an order made by a common law judge in chambers refusing to discharge a debtor on the ground that the deed, on the registration of which he sought his discharge, was invalid under the 192nd section of the Act of 1861. On the whole, notwithstanding the weighty dicta, and, it must be owned, the decisions in some cases in favour of the existence of the jurisdiction, it is the opinion of the present writer that the commissioners act more prudently in declining to exercise it.

Re Kinnaird.

In a late case a debtor who had executed a deed, duly registered under the 192nd section of the Act of 1861, having been arrested

(*k*) *Re Smith*, 10 L. T., N. S. 155.

and committed under a judgment summons issuing out of the City of London Sheriffs' Court, the Court of Bankruptcy ordered his discharge, notwithstanding a provision in the City of London Small Debts Act, that no protection order or certificate granted by any Court of Bankruptcy or for the relief of insolvent debtors shall be available to discharge any defendant from any commitment under such order for commitment (*l*); but this was a commitment by an inferior court in contempt of the Court of Bankruptcy, and it might be fairly said that the latter court was authorized in giving effect to its own order. A defendant having been arrested on a *ca. sa.*, was discharged on the registration of a deed under the 192nd section, but it having been afterwards shown that the deed was invalid within that section, and that the compensation offered by it was not in fact paid, a re-arrest was ordered by a common law judge at chambers (*m*).

Daniels v. Jansen.

It is to be noticed, that the protection granted by the certificate of registration of a deed is only available in case the deed is actually valid under the 192nd section, of which the certificate is not conclusive evidence (*n*).

The protection of a bankrupt extends only to personal process, and there is nothing to prevent process of execution against the goods of the bankrupt, except that an uncertificated bankrupt can have no goods on which the execution can operate; an arranging debtor may have goods, however, and it would seem they might, so far as this section is concerned, be seized under a *fi. fa.*, or his lands under an *elegit*, notwithstanding his registration of a deed, unless indeed the deed itself releases him. This power is, however, closely limited by the 198th section. (*See Chapter on Arrangement Deeds.*)

Protection of a bankrupt is only against personal process, and does not prevent execution against his goods. Goods of arranging debtor liable to execution, *semble*.

There is nothing in the protection given to a bankrupt to prevent the bringing, or to operate the stay of an action (*o*).

Protection does not prevent or stay actions against bankrupt.

As a bankrupt may be discharged out of custody on his surrender, the proper course for a judgment creditor who has arrested the bankrupt after adjudication, but before surrender, is, to discharge the bankrupt and prove his debt at the same time (*p*).

Judgment creditor arresting bankrupt should discharge him and prove for debt.

The bankrupt is bound not only to surrender himself, but to

(*l*) *Re Kinnaird*, 7 L. T., N. S. 25; see also *Re Willsmere*, 8 L. T., N. S. 853.

(*m*) *Daniels v. Jansen*, 10 L. T., N. S. 850, 909.

(*n*) *Re Shettle, Ex parte Godden*, 32 L. J., Bcy. 37; *Ilderton v. Jewell*, 2 N. R. 324;

Ex parte Page, Re Neal, 32 L. J., Bcy. 14; *Re Rochefort*, 12 W. R. 318; *Lloyd v. Harrison*, 13 W. R. 602.

(*o*) *Naylor v. Mortimore*, 9 W. R. 784.

(*p*) *Re Laidlaw*, 4 L. T., N. S. 123.

CHAP. XVII.

Bankrupt
should give
information as
to assets, give
up books, &c.
Must attend
commission-
ers ;

and answer
them as to his
trade, deal-
ings, &c.

Must discover
books, papers,
&c.

After surrender
must attend
assignees and
aid in making
out accounts
of his estate ;

and do all acts
for getting in
and protecting
the estate.

When exa-
mined before
commissioners
must discover
his assets and
show how they

afford all information in his power to the court and his assignees and creditors touching his dealings and estate ; he must give up his books and submit to full examination as before noticed in the Chapter on Discovery and Realization of the Assets.

He must attend the commissioners, upon every summons served upon him for that purpose ; otherwise the commissioners may issue their warrant against him, and have him apprehended and brought before them. (12 & 13 Vict. c. 106, s. 260, *ante*, pp. 495 *et seq.*)

When before the commissioners he must not refuse to be sworn, or to answer to the satisfaction of the commissioners any questions put to him by them touching any matter “relating to his trade, dealings or estate, or which may tend to disclose any secret grant, conveyance or concealment of his lands, tenements, goods, money or debts ;” if he does, the commissioners may commit him. (12 & 13 Vict. c. 106, s. 260, *ante*, pp. 495 *et seq.*)

The bankrupt must discover all his books, papers and writings in the possession of other persons (12 & 13 Vict. c. 106, s. 105, p. 484, *ante*) ; and by the same section every bankrupt, not in prison or custody, shall at all times after such surrender attend the assignees, upon every reasonable notice in writing for that purpose given by them to him or left at his usual or last known place of abode, and shall assist such assignees in making out the accounts of his estate ; and such bankrupt, after he shall have surrendered, may, at all seasonable times before the expiration of such time as shall be allowed to him to finish his examination, inspect his books, papers and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him ; and every such bankrupt, after he shall have obtained his certificate, shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the assignees to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in or protecting the said estate, for which attendance he shall be paid five shillings per day by the official assignee out of his estate.

Upon his examination before the commissioners he must discover all his real and personal estate, and how and to whom, upon what consideration and when, he disposed of, assigned or transferred any of such estate, and all books, papers and writings

CHAP. XVII.

relating thereunto (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expenses of his family); and he must, upon such examination, deliver up to the court all such part of such estate, and all books, papers and writings relating thereunto as shall be in his possession, custody or power (except the necessary wearing apparel of himself, his wife and children); and he must not remove, conceal or embezzle any part of such estate, of the value of ten pounds or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors; otherwise he shall be deemed guilty of a misdemeanor. (*Act of 1861, sect. 221.*)

have been disposed of, &c.; and must deliver to court such parts as in his own possession, &c. (except wearing apparel); guilty of misdemeanor if he conceals property to value of 10*l*.

He must join his assignees in the conveyance of the estate, if ordered by the Lord Chancellor to do so (12 & 13 *Vict. c. 106, s. 148, ante, p. 511*); but he cannot be compelled to make out a good title (*q*).

Must join assignees in conveying his estate.

By the Act of 1849, sect. 104, the bankrupt may show cause against the adjudication before advertisement (*ante, pp. 776, 798, 799*), and by appeal he may dispute his adjudication by presenting a petition within the time limited by the act. (*See ante, p. 809.*)

May show cause against fiat before advertisement, or present petition of appeal.

After he has surrendered, he has a right at all seasonable times, before the expiration of such time as shall be allowed to him to finish his examination, to inspect his books, papers and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him (*r*).

After surrender may inspect his books, &c.

He is of course bound to put his assignees in possession of all his property; and where he continued to hold property under a beneficial contract for a three years' tenancy, which the assignees elected to accept, the court refused to allow him to pass his last examination until he had given up possession to his assignees (*s*).

Bound to put assignees in possession of all his property.

He is bound to prepare and subscribe and file in court a statement of accounts ten days at least, which has been held to mean ten clear days (*t*), before the day appointed for his last examination, or the adjournment thereof, and to make oath of the truth of the statement whenever he shall be duly required by the court so to do, and his last examination shall not be passed unless the statement shall be duly filed as provided by the 141st section of the

Bound to file accounts in court ten days before last examination, and to make oath as to truth of statement.

(*q*) *Ex parte Blakes*, 1 Cox, 398; *Selkrig v. Davis*, 2 Rose, 291.

14 Ves. 513.

(*r*) *Ex parte Morgan*, 1 Glyn & J. 404; *Ex parte Ross*, 1 Rose, 33; *Twogood v. Swanston*, 6 Ves. 485; *Ex parte Vaughan*,

(*s*) *Re Barker*, 7 L. T., N. S. 724; *Re M'Carthy*, 7 L. T., N. S. 804.

(*t*) *Re Eglinton*, 6 L. T., N. S. 166.

CHAP. XVII. Act of 1861. Where the statement was filed later than ten days before the sitting for passing the bankrupt's last examination, that sitting was adjourned (*t*).

He was formerly entitled to reserve out of the property to be given up to his assignees "the necessary wearing apparel of himself, his wife and children;" at least he was not punishable for not delivering them up (*u*). And he might retain, under the name of excepted articles, such articles of household furniture and tools, implements of trade and other like necessities as he should specify and select, not exceeding in the whole the value of 20*l.*, and such excepted articles were not subject to be sold or disposed of in the bankruptcy, or to be taken in execution at the suit of any creditor entitled to prove under the bankruptcy. (*See 17 & 18 Vict. c. 119, s. 25.*)

These enactments, as also the 26th and 27th sections of the last-mentioned act, giving the bankrupt other privileges with regard to household furniture, tools of trade, &c., have been repealed, and the decisions upon them have become unimportant.

Allowance to be made to bankrupt till last examination or adjournment *sine die* of last examination.

Allowance to the Bankrupt until his Examination.]—By stat. 12 & 13 Vict. c. 106, s. 194, it shall be lawful for the court, if it think fit, from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family: provided always, that no such allowance shall be made by the court for any period after the adjournment of the last examination *sine die*.

Allowance in discretion of commissioner both after and before choice of assignees.

By this section, the allowance to the bankrupt, as well after as before the choice of assignees, is in the discretion of the commissioner. By the 6 Geo. 4, c. 16, s. 114, the allowance, before the choice of assignees, was made by the commissioner; and after the choice, by the assignees, with the approbation of the commissioner.

The court will not be over-severe with a bankrupt who has not endeavoured to evade the bankrupt law. So, where a bankrupt had concealed and removed some of his goods before adjudication, but on hearing that he was made bankrupt brought them back, and submitted and behaved himself properly, he was allowed a weekly allowance till the time for his last examination (*x*).

(*t*) *Re Eglinton*, 6 L. T., N. S. 166.

(*u*) *Ex parte Ross*, 1 Rose, 33; 17 Ves.

374.

(*x*) *Re Gamble*, 28 L. T. 21.

By the Act of 1861, sect. 109, it is enacted, that at the first meeting of creditors a majority in value of the creditors present shall determine whether any or what allowance for support shall be made to the bankrupt up to the time of passing his last examination.

CHAP. XVII.

Sect. 109 of the Act of 1861, as to allowance.

Any such allowance must be made at the first meeting; the court will not entertain an application for it at any subsequent meeting (y). It has been held, too, under this section, that separate creditors may resolve that the bankrupt shall have an allowance out of his separate estate, and that the joint creditors cannot interfere (z), which, however, seems an unreasonable rule, as the surplus of separate assets belongs to the joint creditors. If the assignees refuse to pay the allowance granted under this section, the court will grant a rule against them to show cause (a). The power formerly in the commissioner is not expressly taken away from him by the new statute, but this clause seems inconsistent in most respects with the maintenance of such power; perhaps the true way to reconcile the two enactments will be, to leave to the commissioner the power to settle the allowance payable until, and subject to the control of, the first meeting, and then the new statute gives the meeting the power of determining, if it please to do so, the future allowance until the last examination, but if the meeting makes no resolution, the allowance made by the commissioner is well made, and is taken to be confirmed (b). In a case of *Re Knight* (c), Mr. Fonblanque doubted his jurisdiction to order any of the bankrupt's estate to be paid him for maintenance until the choice of assignees, but the grounds for this doubt seem to be removed by the decision of *Ex parte Ellerton*; under the former law such a jurisdiction was frequently exercised under the 194th sect. of the Act of 1849.

Must be made at first meeting.

Joint creditors may not interfere with grant by separate creditors of allowance from separate estate.

Commissioner's power to grant allowance not taken away, *quære*;*semble*, it continues till first meeting, or if not altered thereat, till last examination.*Re Knight*.*Ex parte Ellerton*.

Allowance made by commissioner to bankrupt's

The power of creditors to grant an allowance under this section extends, however, no longer than the time limited under sect. 140 for the bankrupt to pass his last examination, and if by any chance he fail to pass at that time, his right to any allowance after that time under the 109th section ceases (d). But in a late case an allowance was made by the commissioner out of the estate to the bankrupt's widow, the creditors having made no allowance at the

(y) *Re White*, 6 L. T., N. S. 258.(z) *Re Downton*, 5 L. T., N. S. 776.(a) *Re Godfrey*, 5 L. T., N. S. 807.(b) Since decided, *Ex parte Ellerton*, 12 W. R. 722; *Re W. Smith*, 7 L. T., N. S.225; and see *Re Turley*, 13 W. R. 152.

(c) 7 L. T., N. S. 168.

(d) *Ex parte Osborn*, *Re Jowett*, 13 W. R. 146.

CHAP. XVII.

widow, he
having died
before last
sitting.

If bankrupt
absconds, court
has no power to
order mainte-
nance for his
family.

Court, after
choice of
assignees,
appoints day
for last exami-
nation ;

and may en-
large time for
last sitting or
adjourn.

Bankrupt
making full
disclosure at
last sitting,
entitled to
have discharge
considered.

Court of Ap-
peal is slow to
interfere with
commissioners'
discretion as
to nature of
accounts.

Surplus pro-
duce of realty
belongs to
heir at law, but
allowance
under sect.
195 to exe-
cutor or ad-
ministrator.

By sect. 195
of the Act of
1849, certifi-
cated bank-
rupt when 10s.
in 1l. paid
allowed 5 per
cent. of net

first meeting, and the bankrupt having died before the sitting for the last examination (*d*).

When a bankrupt has absconded, the court has no power, under the 194th sect. of the Act of 1849, to order any allowance for the maintenance of his family.

By sect. 140 of the Act of 1861, the court shall, forthwith after the meeting for the choice of an assignee by the creditors, appoint a public sitting on a day not later than sixty days from the date of such meeting, and shall give notice of such sitting in the London Gazette, and in such newspapers as the court shall direct, for the bankrupt to pass his last examination, and also, unless the court shall in any case otherwise direct, to make application for his discharge; but the court shall have power to enlarge the time appointed for such sitting, or to adjourn the same.

At this sitting, if the bankrupt makes a full disclosure of his affairs, and acts under the orders of the court, he is entitled to be passed, and to have the question of his discharge immediately considered. The court has no right to adjourn his last examination, except for the purpose of obtaining discovery or realization of the assets, and it ought not to use the power of adjournment as a means of punishing the bankrupt indirectly for offences for which his order of discharge could not be refused or suspended (*e*). The Court of Appeal is backward to interfere with the discretion of the commissioners as to what are satisfactory accounts; but it has directed a statement to be furnished to the bankrupt of the particulars in which the account is alleged to be unsatisfactory (*f*). The surplus arising from sale of the bankrupt's real estate belongs to his heir at law, but his personal representative is entitled to the allowance claimable under the 195th section (*g*).

By stat. 12 & 13 Vict. c. 106, s. 195, not expressly repealed, every bankrupt who shall have obtained his certificate, if the net produce of his estate in hand shall by any order of dividend (with or without prior dividend) pay the creditors who before or at the time of making such order have proved under the bankruptcy ten shillings in the pound, shall be allowed and paid five pounds per centum out of such produce, provided such allowance shall not exceed 400*l.*; and every such bankrupt, if such produce shall

(*d*) *Re Kightley*, 14 W. R. 49.

(*f*) *Re Quinn*, 10 L. T., N. S. 704.

(*e*) *Ex parte Grummitt*, 12 W. R. 1018;
10 L. T., N. S. 680; see *Re Lenzberg*, 10
L. T., N. S. 729.

(*g*) *Ex parte Stidolph*, 12 L. T., N. S.
800.

CHAP. XVII.

(with or without prior dividend) pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per centum, provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall (with or without prior dividend) pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid ten pounds per centum, provided such allowance shall not exceed six hundred pounds: provided always, that no such allowance shall be payable to any bankrupt until after the expiration of twelve months from the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, and such allowance shall then be payable only in the event of the dividends, paid to the creditors, who at any time before the expiration of such twelve months shall have proved debts, being of the requisite amount in that behalf aforesaid; and if at the expiration of such time the dividends paid shall not amount to ten shillings in the pound, it shall be lawful for the court to allow such bankrupt so much as the assignees and court shall think fit, not exceeding three pounds per centum and three hundred pounds; provided always, that the court shall, if it think fit, reduce any allowance in case it shall have only granted the bankrupt a certificate of the second or third class. (See 6 Geo. 4, c. 16, s. 128, and 5 & 6 Vict. c. 122, s. 44.)

produce, but allowance not to exceed 400*l.*, &c.

Proviso giving court power to reduce allowance, where certificate only of second or third class.

Under 6 Geo. 4, c. 16, s. 128, it has been held that the bankrupt is not of right entitled to his allowance of five per cent., except out of the surplus of the estate which remains after paying ten shillings in the pound (*h*); and if a dividend is declared, the bankrupt cannot claim his allowance out of the sum divided (*i*). The bankrupt's right to this allowance is an interest vested in him upon the declaration of a dividend, and upon his death goes to his representatives (*j*), or upon his second bankruptcy, to his assignees (*k*). And if the bankrupt is dead at the time of declaring the dividend, the right to the allowance vests in his personal representatives (*l*).

If dividend declared, bankrupt cannot claim allowance out of sum divided; on second bankruptcy the allowance goes to assignees under it.

Formerly it was believed that a bankrupt was not entitled to his allowance till a final dividend was made, for so long as cre-

Formerly bankrupt not entitled to

(*h*) *Ex parte Petheridge*, Mon. & B. 161; 2 Dea. & C. 137.

(*i*) *Ib.*

(*j*) *Ex parte Calcot*, 1 Atk. 208; *Ex parte Trap*, *Ib.* 207; *Ex parte Stafford*, 2 Glyn & J. 128; *Ex parte Stidolph*, 12 L. T., N. S. 800.

(*k*) *Ex parte Miller*, 2 Cox, 213.

(*l*) *Ex parte Stafford*, *Ex parte Stidolph*, *supra*; and see further as to allowance to bankrupt, *Ex parte Gibbons*, 13 W. R. 1001; *Ex parte Turner*, 12 L. T., N. S. 770, and *Re Lovell*, 11 Jur., N. S. 985.

CHAP. XVII.

allowance till final dividend paid.

Distinction introduced by the Act of 1849, as to dividend to creditors proving up to date of order for dividend.

ditors are allowed to prove, the title to, or amount of, the allowance could not be ascertained (*l*); but there is a marked distinction in the wording of the Act of 1849 from that of any of the former acts, for under the last-mentioned act, if a dividend of sufficient amount has been paid by order to the creditors who *up to the date of the order* have proved, the allowance becomes due, though any number or amount of creditors should prove immediately after. Under the earlier acts, the words were only "if the net produce of his estate shall pay the creditors who have proved under the commission," which was held to mean all the creditors who should at any time have proved under the commission; accordingly, as it was necessary that some time should be fixed when it might be assumed that all the creditors who would prove had proved, the announcement of final dividend was fixed on; and a dividend, advertised as final, was for this purpose considered a final dividend, although it was not so declared by the commissioner, and although the bankrupt was indebted to the assignees, and the estate was, so far, outstanding (*m*); and where the commission had issued in 1815, and a final dividend was advertised in 1827, the bankrupt's allowance was ordered to be paid, although some reversionary property of small amount remained to be realized (*n*).

It was held, too, that the bankrupt could call upon the assignees to declare a final dividend with the view to claiming his allowance; and where the assignees had, without an order of dividend, divided a sum of money among the creditors, the bankrupt was declared entitled to an allowance upon the sum so distributed (*o*).

If the bankrupt is entitled to an allowance, he is, it seems, entitled to an account, against the assignees, of assets out of which it may be paid; and where, at their audit, one of two assignees had admitted a sum of money to be in the hands of both, applicable to future claims, the bankrupt was held entitled to an inquiry whether any part of the money ever came to the hands of the other and surviving assignee (*p*); and under circumstances the bankrupt may have an inquiry what he ought to be allowed out of his estate. In calculating the bankrupt's allowance under 6 Geo. 4, c. 16, s. 128, it was held, that the assignees might set off sums due from

Bankrupt entitled to allowance, has right to account to ascertain amount.

(*l*) *Ex parte Stiles*, 1 Atk. 208; *Ex parte Surridge*, M. & M'A. 287; see also *Ex parte Minchin*, M. & M'A. 135.

(*m*) *Ex parte Cooper*, 2 Dea. 41; 2 Mon. & A. 689.

(*n*) *Ex parte Davis*, Mon. & M'A. 36.

(*o*) *Ex parte Lomas*, 1 Mon. & A. 437; 3 Dea. & C. 681.

(*p*) *Ex parte Coombes*, 2 Dea. & C. 319.

the bankrupt to the estate, but the bankrupt could not set off against what he owed to the estate sums due to him from the assignees personally (q). CHAP. XVII.

It is premature for a bankrupt to apply for his allowance until after a dividend meeting has been held, for till then it cannot appear that the conditions of the statute have been satisfied (r); but after the dividend, the allowance is *ex debito justitiæ*, and the assent of the assignees is not requisite (s).

Where, after the production of assets sufficient to pay 15s. in the pound, a deed has been executed under the 185th section of the Act of 1861, it has been held, that the debtor is not entitled as of right to his statutory allowance; and where his conduct had been open to suspicion, the court refused an application for allowance (t).

Formerly, under a joint commission, one partner alone could not be entitled to allowance (u). But now, by stat. 12 & 13 Vict. c. 106, s. 196, in all joint fiats or petitions for adjudication of bankruptcy under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although the other partner may not be entitled to any allowance.

This is similar to the 5 & 6 Vict. c. 122, s. 45, and 6 Geo. 4, c. 16, s. 129.

But he is not entitled to double allowance out of the joint, and out of the separate estate (x); nor is he entitled to allowance at all, unless both the joint and separate creditors are paid the proportion of their debts required by the statute (y); and not even where both joint and separate estates have paid a sufficient dividend, unless both are administered under a bankruptcy properly speaking. Thus, where the separate estates were administered under separate commissions, and the joint under an order of the Chancellor Lord Thurlow, to keep separate accounts of joint and separate estates, it was held, that the bankrupt could be entitled to no more, as against his joint creditors, than he would have been entitled to under a decree for administration in Chancery,

Cannot apply for allowance till after a dividend meeting; but afterwards assent of assignees not requisite.

Where deed executed under sect. 185 of the Act of 1861, debtor not entitled as of right to statutory allowance.

If bankrupt's conduct open to suspicion, application for allowance refused.

Partner now may claim allowance in respect of dividend on separate and joint estate.

But not entitled to double allowance, nor to any allowance unless joint and separate creditors paid due proportion of debts.

Nor unless joint and separate estates administered under bankruptcy.

(q) *Ex parte Cooper*, 3 Mon. & A. 137. 512.

(r) *Ex parte Owen*, 28 L. T. 328.

(s) *Re Cohen*, 29 L. T. 130.

(t) *Re Maycock*, 11 W. R. 1094.

(u) *Ex parte Powell*, 1 Mad. 68.

(x) *Ex parte Bate*, 1 Bro. 453; Cooke, 209.

(y) *Ex parte Powell*, 1 Mad. 68; *Ex parte Goodall*, 2 Glyn & J. 282; see *Ex parte Holmes*, 2 Rose, 95; 3 V. & B. 137; *Ex parte Farlow*, 1 Rose, 421; 2 V. & B.

CHAP. XVII.

Allowance not accruing till after second bankruptcy and order of discharge, held not to pass to assignees under second bankruptcy, *sed quære*.

Majority of creditors at first meeting to have power to order allowance.

This section open to three constructions.

The last of the three preferable, *quære*.

Sed vide Re Beater and Ex parte Lovel.

Subsequent dividend meetings have like power as to allowance, *semble*.

Surplus after payment of 20s. in the pound to be

and so could claim no more than the surplus after the joint creditors were paid in full (z). It has been held that an allowance obtained by a bankrupt under the 195th section of the Act of 1849, and not accruing until after a second bankruptcy and an order of discharge under it, did not pass to his assignees under the second bankruptcy (a), but the decision seems open to question.

The sections just commented on have not been, as already noticed, expressly repealed; but by the Act of 1861, sect. 174, it is enacted, that at the first dividend meeting the majority in value of the creditors present shall determine whether any and what allowance shall be made to the bankrupt out of his estate, if he has obtained or shall obtain a discharge.

The words of the latter enactment are open to three constructions; either it substitutes for the absolute right of the bankrupt under the former statute, a right depending on the vote of the creditors, and not existing except by that vote; or it leaves the bankrupt that absolute right and gives him a further right to such allowance as the creditors may make him; or it leaves him his former statutory right, unless controlled by a vote of the creditors, which may alter or altogether refuse such allowance. It is submitted that the last is more in harmony with the analogy of the rule as to allowance, up to the time of passing the last examination, laid down in *Ex parte Ellerton* (b). The law has, however, been held to be otherwise by one of the learned commissioners, who has held that the former enactment is impliedly repealed by the latter (c); and in a later case it has been decided that a bankrupt has no right, after discharge, to an allowance under sect. 195 of the Act of 1849, on the ground that that section has been repealed by sect. 174 of the Act of 1861 (d).

It seems, also, that, by the 179th section, subsequent dividend meetings will have the like power as to allowance that the first meeting has.

By stat. 12 & 13 Vict. c. 106, s. 197, if the produce of the estate of any bankrupt shall be sufficient to pay twenty shillings in the pound and interest as hereinafter mentioned, and to leave a surplus, the court may order such surplus to be paid to such bank-

(z) *Ex parte Begbie, re Grant*, 12 W. R. 690.

(a) *Ex parte Cobb*, 10 L. T., N. S. 465; see ante, remarks, *Property passing, Choses in Action*.

(b) See *Ex parte Ellerton*, 12 W. R. 722.

(c) *Re Beater*, 7 L. T., N. S. 287; *Anon.*, 9 L. T., N. S. 151.

(d) *Ex parte Lovel*, 14 W. R. 186.

rupt, his executors, administrators or assigns; and every such bankrupt shall be entitled to recover the remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors, who have proved, shall have received interest upon their debts to be calculated and paid at the rate and in the order following; viz., all creditors whose debts are by law entitled to carry interest in the event of a surplus shall first receive interest on such debts at the rate of interest reserved or by law payable or proveable thereon, to be calculated from the date of the fiat or the filing of the petition for adjudication of bankruptcy; and after such interest shall have been paid, all other creditors who have proved shall receive interest on their debts from the date of the fiat or of such petition at the rate of four pounds per centum per annum (*d*).

A mere inspection of the assignees' accounts does not satisfy the intention of the statute; the bankrupt is entitled to copies; and in a case, where the bankrupt petitioned *in formâ pauperis*, and had not made any previous application to the commissioner, the court, considering it was an old commission, and that some of the commissioners were probably dead, referred the accounts to the registrar for examination, and to ascertain if the bankrupt had any probable interest in the estate (*e*). Where a bankrupt, having been abroad when the fiat issued, surrendered under an order of court, and there being no one present to examine him, the commissioner, after taking his surrender, adjourned his examination for three months, it was held that his non-attendance at the adjourned meeting did not deprive him of his right, under 6 Geo. 4, c. 16, s. 132, to an order upon his assignees to declare how they had disposed of his estate (*f*).

If a certificated bankrupt shows merely a probability of a surplus, he is entitled to call on the assignees to account (*g*).

If the bankrupt can show a probable surplus, so as to give him an interest, the court will, on his petition, remove an assignee having an interest hostile to the creditors, or even permit him to sue an assignee who is an accounting party to the creditors; as, where such assignee is a trustee under a trust-deed for the benefit of the creditors (*h*); but the bankrupt cannot petition to call his assignees to account, except in respect of his interest in the surplus

CHAP. XVII.

for bankrupt, his executors, &c.

But where dividend amounts to 20s. in the pound, creditors entitled to interest at 4l. per cent.

Bankrupt entitled to copies of accounts to ascertain his probable interest in the estate.

Ex parte Tarleton.

Certificated bankrupt showing probable surplus, may call on assignees for account; and may petition for removal of assignee with interest hostile to creditors.

(*d*) *Bromley v. Goodere*, 1 Atk. 80; *Banks v. Scott*, 5 Mad. 493; *Butcher v. Churchill*, 14 Ves. 573.

(*e*) *Ex parte Emerson*, 2 Dea. 156; 3 Mon. & A. 133.

(*f*) *Ex parte Tarleton*, 2 M., D. & D. 189.

(*g*) *Ex parte Malachy*, 1 M., D. & D. 353.

(*h*) *Ex parte Archer*, 2 Glyn & J. 110.

CHAP. XVII.

Petition for account against assignee after long interval from fiat.

But bankrupt cannot file bill against assignees for account in equity without charging specific acts of fraud.

Court of Bankruptcy cannot compel executors of deceased assignees to account to bankrupt.

Uncertificated bankrupt may bring action in his own name for personal labour done after date of fiat or for trust property.

Uncertificated bankrupt may acquire property and may sue in respect of it.

of the estate; and therefore, when the petition did not allege that his estate would probably produce a surplus, it was dismissed (*i*).

On a petition of the bankrupt against a surviving assignee seventeen years after the fiat issued, as it did not appear that any personal estate had been received since the last audit, the court refused to order an account of the personal estate, but as the assignees had been in the receipt of the rents of the real estate, an account was directed as to the real estate (*k*). But the bankrupt cannot file a bill in equity against his assignees for an account of their dealings under the bankruptcy, not even by charging fraud and collusion between the assignees and other parties, unless the bill charges specific acts of fraud on the part of the assignees, and prays relief against them on the ground of fraud (*l*). The Court of Bankruptcy has no jurisdiction over the executors of deceased assignees to order them to account to the bankrupt or his representatives (*m*).

Until the bankrupt has obtained his order of discharge all the property, which he may acquire, passes, as has been seen, to his assignees, and in general even his rights of action, so that his bankruptcy is in general a good plea in bar to an action brought by him, if it be alleged that the assignees have accepted the right of action. Certain actions he can, however, maintain in his own name, as for personal labour performed after the filing of the petition for adjudication (*n*); or for the recovery of trust property, of which he is express trustee. (*See ante, Property passing to Assignees.*)

It has been held that a bankrupt, though uncertificated, may maintain an action with relation to any after-acquired property (*o*), or sue upon any contract made with him (*p*), unless his assignees interfere (*q*), or for the value of his personal labour performed since the adjudication; for an uncertificated bankrupt may acquire property, and contract for the benefit of his assignees, and may sue in respect of such property or contract, and a plea of bankruptcy is no defence unless there is an allegation that the assignees have interfered. The same was true of a bankrupt who had obtained his

(*i*) *Ex parte Ryley*, 4 Dea. & C. 50; see *Ex parte Harrison*, Buck, 246.

(*k*) *Ex parte Newhouse*, 5 Jur. 250.

(*l*) *Tarleton v. Hornby*, 1 Y. & C. 172; *Lautour v. Holcombe*, 8 Sim. 76.

(*m*) *Ex parte Richards*, 4 Dea. & C. 183; 2 Mon. & A. 75.

(*n*) *Chippendale v. Tomlinson*, Cooke, 428; *Silk v. Osborn*, 1 Esp. 140.

(*o*) *Webb v. Fox*, 7 T. R. 391; *Fowler v. Down*, 1 B. & P. 44; *Evans v. Brown*,

1 Esp. 170; *Laroche v. Wakeman*, 1 Peake, 190.

(*p*) *Cumming v. Roebuck*, Holt, 172; see *Drayton v. Dale*, 3 D. & R. 534; 2 B. & C. 293.

(*q*) *Kitchen v. Bartsch*, 7 East, 53; *Herbert v. Sayer*, 5 Q. B. 965; 2 Dow. & L. 49; 8 Jur. 812; see *Williams v. Chambers*, 11 Jur. 798; *Hole v. Hole*, 13 W. R. 39.

certificate under a second bankruptcy under the Act 6 Geo. 4, CHAP. XVII.
c. 16, and had not paid 15s. in the pound (r); and it seems now too late to attempt to overthrow these decisions; they have, however, constantly been felt to be against principle, and great judges have constantly spoken of them with disapproval; but in no case where the right of action, being of such a nature as that it would pass to the assignees, has accrued to the bankrupt in respect of matters before the bankruptcy, can the bankrupt sue: even the disclaimer of the assignees will in such case enure only for the benefit of the defendant, and not for that of the bankrupt. So, where a bankrupt was to have a commission for introducing a purchaser for another trader's business, and became bankrupt after the party was introduced, but before the purchase was completed, and the assignees disclaimed all interest in the contract, this disclaimer did not give the bankrupt any right to sue for the commission; and though the purchase was completed after the bankruptcy, the right to the commission referred back to the time the party was introduced (s).

These decisions disapproved of;

but where rights of action accrue to bankrupt in respect of matters prior to bankruptcy, bankrupt cannot sue.

Hillary v. Morris.

In one case, indeed, where, before the bankruptcy, a warrant of attorney was given to enter up judgment in Ireland in the name of the bankrupt, to secure a debt on bond, it was held that the assignee might sue on the bond in his own name, or avail himself of the warrant of attorney in the name of the bankrupt; and an action on the judgment entered up being brought by the bankrupt, the court intended it as for the benefit of the estate, and a plea of the bankruptcy of the plaintiff, and the pendency of another action by the assignees was held no defence; the remedy was, it was said, by bill of interpleader (t).

See contra, *Guinness v. Carroll.*

The case just mentioned of *Guinness v. Carroll* is only an instance of the mischief of the rule which allows that a bankrupt may in some cases sue in his own name in an action which has in right vested in his assignees. In the case last mentioned it seems clear that had an application been made in the court in Ireland to set aside the judgment on the ground that the warrant was revoked by the bankruptcy, it would have been set aside, unless it could have been shown that it had been entered up at the instance of the assignees, and that the bankrupt was only acting as their agent, and the assignees themselves could only have maintained it on terms of not prosecuting any other action on the same debt.

Practice that bankrupt may in some cases sue in his own name where right of action vested in assignees.

(r) *Herbert v. Sayer*, 8 Jur. 812; 5 Q. B. 956; 2 D. & L. 49.

(s) *Hillary v. Morris*, 5 Car. & P. 6.

(t) *Guinness v. Carroll*, 1 B. & Adol. 459.

CHAP. XVII.

Rule that bankrupt suing for assignees, must give security for costs.

Denton v. Williams.

Beckham v. Knight.

Bankrupt may move court to set aside execution levied on his goods before bankruptcy.

Pinches v. Harvey.

Shepherd v. Thompson.

As to the principle of decision in these cases, *quære*.

In cases, however, where the bankrupt, being at the time uncertificated, is suing for the benefit of his assignees, the general rule of the courts of law is that, if required, he must give security for costs, as otherwise the assignees might encourage him to proceed in actions which were speculative and hazardous, taking the fruits of them if successful, and leaving the bankrupt naked to answer the costs which, in that case, if the action failed (*u*), could not be recovered by the defendants. In the last of the cases just cited, where, after a verdict for the plaintiff and a rule for a new trial made absolute, the plaintiff became bankrupt, it was held that he must give security for costs, unless an affidavit could be made expressly denying that the action would be carried on for the benefit of the assignees; the mere absence of an affidavit, that the action would be carried on for their benefit, not being held sufficient to exempt the bankrupt from giving security.

If the plaintiff, after joinder in demurrer, becomes bankrupt and obtains his certificate, and the assignees decline to continue the action, the court, in which the action is brought, will not order the bankrupt to give security for costs (*x*).

It has been held that a bankrupt has a sufficient interest in increasing the dividends under the bankruptcy to entitle him to move the court to set aside an execution levied on his goods before the bankruptcy (*y*); and a defendant who has become bankrupt and obtained his certificate after trial and verdict against him, has a right to set it aside for the want of a sufficient notice of trial, although his estate is insolvent, and his assignees are no parties to the application (*z*).

Both these cases also seem rather opposed to principle; otherwise if the interest of a bankrupt in increasing the dividend or the possible surplus were a cognizable interest there is no suit, at least in equity, regarding his assets to which he would not be a proper party.

The same principle which would apply to prevent an uncertificated bankrupt suing, would also apply to prevent a certificated bankrupt suing in respect of an interest which had passed to his assignees, and as to any other interest he is of course entitled to

(*u*) *Mason v. Polhill*, 2 Dowl. 61; see also *Manley v. Mayne*, 2 M. & Ry. 381; *Denton v. Williams*, 8 Dowl. 123.
(*x*) *Beckham v. Knight*, 6 Dowl. 227; 5 Scott, 336.

(*y*) *Pinches v. Harvey*, 6 Jur. 389; 1 Q. B. 868.

(*z*) *Shepherd v. Thompson*, 9 M. & W. 110; 1 Dowl., N. S. 345.

sue like any other person. The following case, therefore, should be classed with those just mentioned.

Where the plaintiff sued for breach of contract, in not paying for books by giving bills of exchange for the price, and the defendant having become bankrupt, the plaintiff in the action proved the price of the books under the fiat and received a dividend; it was held that this was not within 6 Geo. 4, c. 16, s. 59, for the debt proved was the price of the books and not the damages for not giving the bills, and that therefore the defendant in the action having obtained his certificate, was entitled to proceed to trial by proviso (a). The case may, however, be thought to rule that the right to judgment for the costs of a frivolous or ill-conceived action brought against a bankrupt does not pass to his assignees; this, however, does not seem to be the true interpretation of the case nor to be itself a tenable proposition. An uncertificated bankrupt may maintain an action for a mere personal wrong or injury suffered before the bankruptcy, but not for a wrong or injury done to his estate. Or he may bring an action against any person who has seized his goods, or taken possession of his house, &c. under the adjudication, or against those by whose direction it has been done, in order to try the validity of the adjudication (b); but if he acquiesces in the bankruptcy, as, for instance, if he canvasses the creditors to vote for particular persons as assignees, he will be estopped from questioning the validity of the adjudication, in an action against these assignees for money had and received (c); but soliciting the appointment of an official assignee is not such acquiescence as to bar the bankrupt's right to dispute the adjudication by an action against such official assignee for money had and received by him as official assignee; for the appointment is for the protection of the property (d). And the bankrupt cannot contest the validity of the adjudication, after obtaining his discharge out of custody by reason of it (e). And where a bankrupt had abandoned a petition for a supersedeas, and joined in a conveyance of part of his property, the Vice-Chancellor, upon petition, restrained him from proceeding in an action which he had brought against the messenger to impeach the commission (f). But although the bankrupt had

Whittaker v. Mason.

Uncertificated bankrupt may bring action for personal injury or wrong sustained before bankruptcy.

May, to try validity of fiat, bring action against person seizing goods under it.

Secus, if he acquiesces in the bankruptcy.

What is acquiescence.

What not.

Bankrupt, discharged under fiat, cannot contest its validity.

(a) *Whittaker v. Mason*, 6 Dowl. 429.

(b) See *Bryant v. Withers*, 2 M. & S. 123, 131; *Donovan v. Duff*, 9 East, 21.

(c) *Like v. Howe*, 6 Esp. 20.

(d) *Munk v. Clark*, 2 Scott, 475; 2 Bing. N. C. 299.

(e) *Goldie v. Gunston*, 4 Camp. 381; *Watson v. Wace*, 5 B. & C. 153; 2 Car. & P. 171; see *Mott v. Mills*, 3 Car. & P. 197.

(f) *Ex parte Cutten*, 1 Glyn & J. 317.

CHAP. XVII.

*Heane v.
Rogers.*

Bankrupt may petition in Court of Bankruptcy in all matters, where he has a direct interest.

Must have taken steps to annul fiat, before being heard in question of right, depending on invalidity of fiat.

But may file bill to set aside sale of his estate made pending proceedings to annul.

Bankrupt, made defendant to suit in respect of property belonging to him at time of bankruptcy, may demur, or plead bankruptcy.

Bankruptcy of plaintiff in

assisted the assignees in giving directions as to the sale of the goods, and had also given notice to the lessors of his farm that he had become bankrupt, and was willing to give up the farm, and, in consequence, the lessors had received the lease, and accepted possession of the premises: it was held, that he could nevertheless maintain an action against his assignee to invalidate his commission, for his interference in the sale of his property was referable to his desire to take care of his property, and the surrender of his lease was not an act to which the assignees were either parties or privies (*g*). In the Court of Bankruptcy he may petition in all matters relating to his bankruptcy, in which he has a direct interest; as, for instance, to annul the fiat (*ante*, pp. 795 *et seq.*), to enlarge the time for his surrender (*ante*, p. 902), or the like; or, in respect of the allowance (*see* pp. 930, 931, *ante*), or of the surplus of his estate (*ante*, p. 933). And we have seen that by the 12 & 13 Vict. c. 106, s. 104 (*ante*, p. 798), he can dispute his adjudication before the commissioner; and by sect. 233 (*ante*, pp. 809 *et seq.*), he may dispute his adjudication by application to the Court of Appeal. Until, however, he has taken some proper steps to set aside his adjudication, he cannot be heard in court in any right which depends on the invalidity of such adjudication. So a bill filed by a bankrupt against a debtor to his estate, on the ground of the invalidity of the commission, and of collusion between the assignees and the debtor, was held bad on demurrer; the proper course being to bring an action to try the validity of the commission, or to petition to remove the assignees (*h*); but if the bankrupt annul the fiat with consent of creditors, and pending his proceedings to annul, the assignees sell his estate to a purchaser, who does not come in under the bankruptcy, a bill may be filed by the bankrupt against the assignees and purchaser, and his solicitor, to set aside the sale for fraud and collusion (*i*). So, if a bankrupt be made a defendant to a suit in respect of any property of his at the time of his bankruptcy, even though fraud in regard to it may be charged against him, he may demur, if his bankruptcy be apparent on the record, or may plead it, if not apparent (*k*); and this, though the decree sought to be obtained would declare him a trustee, he not being so *primâ facie*. The bankruptcy of a plaintiff in equity, however, after the hearing, will not prevent the court from making a decree,

(*g*) *Heane v. Rogers*, 4 Man. & R. 486; 9 B. & C. 577.

(*h*) *Hammond v. Attwood*, 3 Mad. 158.

(*i*) *Lautour v. Holcombe*, 8 Sim. 76.

(*k*) *Gilbert v. Lewis*, 2 J. & H. 452; on appeal, 1 De G., J. & S. 38.

although the assignees refuse to revive, but it will not compel them to do so (*l*). CHAP. XVII.

A plaintiff, who has become bankrupt before decree in a suit in equity, will not be ordered to pay the costs of the suit in which he has lost all interest, unless he has been guilty of misconduct; but if his assignees revive, they do so subject to all liabilities as to costs (*m*). equity after hearing, will not prevent decree.
Plaintiff becoming bankrupt before decree, not liable for costs.

A bankrupt may even after his adjudication join in a submission to arbitration, though of matters which had passed to his assignees, and the payment of costs awarded may be enforced against him (*n*). So also, where, after a solicitor had assigned all his property for the benefit of his creditors by deed within the 192nd sect. of the Act of 1861, a client obtained the common order to tax his bill, whereupon he gave the client notice of the deed, but nevertheless himself appeared and opposed the taxation, on the result of which a balance was found against him; he afterwards moved to set aside the order for taxation, but it was held, that he was precluded by his acquiescence from so doing (*o*). In such a case there may be a doubt whether the balance found against him would be within the protection afforded by the deed, but it seems that no process could be issued to enforce it (*p*). Of course the award will in such case not bind the assignees, unless they choose to ratify it (*q*), no more than the submission of a mere stranger, which it in fact amounts to, but if they adopt the award, they will be bound by all those parts of it which may tell against them. But may, after fiat, join in reference, and costs may be enforced against him.

But award not binding on assignees, unless adopted.

Bankruptcy is, however, a revocation of all powers and authorities granted by the bankrupt which are revocable, and no act done by an attorney of the bankrupt under a power in itself revocable, given before bankruptcy, will be valid as against the assignees (*r*). Bankruptcy revokes all revocable powers.

So, a receiver of an estate was appointed by mortgagor and mortgagee jointly, with powers of distress and entry, and the mortgagor attorned as tenant from year to year to the receiver *Jolly v. Arbuthnot.*

(*l*) *Boucicault v. Delafield*, 12 W. R. 8; see *Davies v. Davies*, 9 Ves. 461; *Collinson v. Lister*, 20 Beav. 355; *Belsham v. Percival*, 8 Hare, 158.

(*m*) *Boucicault v. Delafield*, 12 W. R. 1025.

(*n*) *Re Milnes*, 15 C. B. 451; 18 Jur. 1108.

(*o*) *Re Bartrum*, 12 W. R. 660.

(*p*) *Re Bevan and Girling*, 12 W. R. 196.

(*q*) See ante, *Assignees*; *Marsh v. Wood*, 9 B. & C. 659; *Dod v. Herring*, 3 Sim. 143; *S. C.* on appeal, 1 Russ. & M. 153; *Russell on Arbitration*, 38, 160-2, 2nd ed.; see also, since Common Law Procedure Act, *Pennell v. Walker*, 18 C. B. 651, cited ante, 849.

(*r*) *Hovill v. Lethwaite*, 5 Esp. 158.

CHAP. XVII.

at 3,500*l.* per annum. The deed recited all the facts relating to the mortgage. The mortgagor having become bankrupt the receiver distrained, and it was held, that the powers of distress and entry *were determined* by the bankruptcy, and that the distress was invalid as executed against the goods of the assignees (*s*).

Agreement of bankrupt to confirm sales, understood of sales properly made.

One who has been a bankrupt, but whose bankruptcy has been annulled or superseded, may, as plaintiff, set aside a sale made by the assignees as made to an improper person, a partner with the solicitor to the assignees, notwithstanding that the order annulling was made only on the terms of the bankrupt executing a deed confirming all sales made by his assignees, this being interpreted all sales properly made by the assignees as such (*t*).

Defendant in action becoming bankrupt, after verdict, but before judgment, plaintiff not entitled to prove for costs.

It has been seen that a bankrupt cannot be arrested or sued, even though uncertificated, for any debt proved under his adjudication; or, if arrested, he is entitled to an immediate discharge, irrespective of his right to protection in coming to surrender, and during such period after his examination as the commissioner orders. The defendant in an action became bankrupt, after verdict, but before judgment, and the plaintiff proved the debt, but was not permitted to prove for the costs. The court, upon a summary application under the 6 Geo. 4, c. 16, s. 59, stayed proceedings in the action for recovery of the costs, for, as by the statute the debt could not be proved without relinquishing the action, the plaintiff could not take any further proceeding in it for the costs (*u*). Bankruptcy does not affect the bankrupt's rights as executor or administrator, nor as trustee, although it may be a ground for removal from the office of trustee by a court of equity (*x*), or by a petition in the bankruptcy (*see ante*, p. 363); but until removal, the bankrupt can maintain an action as trustee for another person without giving security for costs, although it is otherwise when he sues for the benefit of the assignees (*y*); his bankruptcy is not in itself a sufficient ground for his removal from his office of trustee, unless it endangers the trust estate (*z*). Where, on a petition to appoint a new trustee in place of the bankrupt, costs were ordered to be paid to the bankrupt, it was held that as the

Bankruptcy of an executor, administrator or trustee does not affect his rights as such; it may be ground for removal from office of trustee; but not unless it endangers the trust estate.

(*s*) *Jolly v. Arbuthnot*, 28 L. J., Ch. 274; 5 Jur., N. S. 80.

(*t*) *Adams v. Swarder*, 12 W. R. 294.

(*u*) *Woodward v. Meredith*, 8 Jur. 1136; 2 D. & L. 142; see also *Geikie v. Hewson*, 4 Man. & G. 18; *Harley v. Greenwood*, 5 B. & A. 95.

(*x*) *Bainbrigge v. Blair*, 1 Beav. 495;

Ex parte Smith, 4 Dea. 214.

(*y*) *Wray v. Brown*, 8 Dow. 279; *Re Bridgman*, 1 Drew. & Sm. 164; 29 L. J., Ch. 844; 6 Jur., N. S. 1065; see also *Ex parte Proctor*, 1 Swanst. 533.

(*z*) *Ex parte Hall*, 1 Dea. 87; 2 Mon. & A. 392.

costs were incurred by the bankrupt in the character of trustee, and were adjudicated to him in that character, they belonged to the bankrupt personally, and did not pass to his assignees (z). He will even, it seems, be allowed to prove upon his own estate for a debt due to him as sole executor, or the like (*ante*, pp. 376, 377 and 539), or as sequestrator of a living; but his receipts will be for the benefit of his estate; and if necessary, the assignees can obtain an order to prevent the bankrupt from availing himself of the sequestration, and for liberty to use his name, for the making the sequestration available for the benefit of the estate (a). So his bankruptcy and certificate are no answer to an action against him as executor, nor to a suit against him in respect of his office of trustee, nor to an action against him as public officer of a banking partnership (b). The court will not remove the committee of a lunatic merely on account of his bankruptcy (c). Bankruptcy also does not incapacitate an attorney from practising his profession (d); it is no revocation of a will (e); it is no abatement of suits in which the bankrupt may be a party (*ante*, p. 867); and if a case, by order at nisi prius, is referred to arbitration, the bankruptcy of the plaintiff does not revoke the submission (f). A bankrupt might formerly have been discharged under the Insolvent Debtors' Act, notwithstanding that a petition for adjudication of bankruptcy had been filed against him subsequently to his arrest, upon inserting an assignment in his schedule of all his estate, title and interest in the property assigned, subject to the adjudication and payment of his debts under it (g).

Bankruptcy does not disqualify a person from being elected a councillor under the Municipal Corporation Act, although he has not obtained his certificate, if he is rated to the relief of the poor, as required by the 28th section of that statute; but it does disqualify the bankrupt from holding the office, if bankruptcy occur after his election (h).

By stat. 52 Geo. 3, c. 144, ss. 1, 2, all members of the House of Commons found and declared bankrupt are rendered incapable of sitting or voting in the house for twelve months from the issuing of the commission, unless, in the mean time, the commission be super-

CHAP. XVII.

Costs adjudged to bankrupt as trustee belong to him personally.

Bankrupt may prove against his own estate as sole executor, &c.

Bankruptcy no answer to action, suit, &c., against him as trustee, &c.

Committee of lunatic not removable merely for bankruptcy.

Bankruptcy does not prevent practice of profession of attorney, nor revoke a will; is no abatement of a suit; does not revoke a submission to arbitration.

Bankrupt not disqualified from being elected a councillor under Municipal Corporation Act, but his bankruptcy after election vacates his office.

Members of House of Commons not to sit

(z) *Ex parte Grimstead*, De G. 72.

(a) *Ex parte Hall*, 1 Dea. 87; 2 Mon. & A. 392.

(b) *Steward v. Dunn*, 11 M. & W. 63; 7 Jur. 178.

(c) *Ex parte Proctor*, 1 Swanst. 533.

(d) *Ex parte Brown*, 2 Ves. jun. 68.

(e) *Charman v. Charman*, 14 Ves. 580.

(f) *Andrews v. Palmer*, 4 B. & A. 250; but see *Dod v. Herring*, 3 Sim. 143; S. C. on appeal, 1 Russ. & M. 153.

(g) *Nunney v. Hall*, 8 Moore, 423.

(h) *Rex v. Chitty*, 1 Nev. & P. 78; 5 Adol. & E. 609.

CHAP. XVII.

or vote if declared bankrupt, unless debts paid in full in twelve months or commission superseded.

If debts not paid in twelve months, &c., new writ to issue.

Bankrupt after discharge not liable for debts proved under fiat.

A *fi. fa.* upon after-acquired goods, will on motion be set aside.

Defendant, becoming bankrupt, may plead bankruptcy *puis darrein continuance*.

Discharge under sect. 164 of the Act of 1861, frees from claims under bankruptcy on any promise, &c., made after fiat.

seded, or their creditors be paid the full amount of their debts ; and if the commission be not superseded or the debts fully satisfied within the twelve months, the commissioners are then to certify the same to the Speaker, and thereupon the election is declared void ; and the Speaker, during the next recess, shall cause notice thereof to be inserted in the Gazette, and in fourteen days afterwards shall issue his warrant to the Clerk of the Crown to make out a new writ for the election of another member, in the room of the member whose seat is thus vacated. (*For the form of the Certificate see post, Appendix.*)

If a bankrupt obtain his order of discharge, or formerly if he obtained his certificate, he was and is no longer liable for the amount of any debts or demands which might have been proved under his bankruptcy (Act of 1861, section 161) ; and if after-acquired goods are taken in execution for a debt proveable under the bankruptcy, the court will set aside the *fi. fa.* on motion, and the bankrupt shall not be put to his *auditâ querelâ*, although it is alleged that the bankruptcy was collusive, and that in an action by the assignees the jury had held against the trading (*i*). If sued before his bankruptcy he may, on bankruptcy supervening, having obtained his order of discharge, plead the same *puis darrein continuance*, and the plaintiff thereupon may reply admitting the plea, and sign judgment for costs (*k*).

By the Act of 1861, sect. 164, after the order of discharge takes effect, the bankrupt shall not be liable to pay or satisfy any debt, claim or demand, proveable under the bankruptcy, or any part thereof, on any contract, promise or agreement, verbal or written, made after adjudication ; and if he be sued on any such contract, promise or agreement, he may plead in general that the cause of action accrued pending proceedings in bankruptcy, and may give this act and the special matter in evidence. The language of this section differs in several respects from that of the 204th section of the Act of 1849, now repealed, which ran as follows : “ No bankrupt, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim or demand, upon any contract, promise or agreement made after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, and if any bankrupt be sued upon any such contract, promise or agreement, he may plead the gene-

(*i*) *Barrow v. Poile*, 1 B. & Adol. 629.

(*k*) *Howard v. Brown*, 7 L. T., N. S. 638.

CHAP. XVII.

ral issue, and give this act and the special matter in evidence." It would seem that the bankrupt is by the new section discharged, on such a promise only, from the time the order of discharge takes effect, so that if it be suspended the bankrupt may be sued and taken in execution on such a promise, which could not have happened under the old act. The policy of the old act in this seems to have been not so much to protect the bankrupt from the effect of his own misdeed, as to deny the creditor any remedy under, and thereby to discourage the making of any such contract, and it is a questionable improvement to allow the creditor to put on such a screw as he may now be able to use. Moreover, though of course it will be held that the plea given by the clause shall be a good plea in bar, there is no enactment in terms to that effect, and it certainly would not be a good plea in bar to an action on such a contract at common law; again, such a plea would in terms be supported by proof that the contract was made even before the order of discharge took effect; and altogether, it seems questionable whether such be not the intention of the clause. A doubt is thus introduced by the terms of the late act which did not exist under that of 1849. Neither statute, however, it would seem, renders contracts of the nature in question void *ab initio*, and so a bill of exchange given to secure a debt proveable under the adjudication appears to be good in the hands of a *bonâ fide* holder for value without notice (*l*).

Protection now less wide than under sect. 204 of the Act of 1849.

Policy of later enactment questionable.

Neither the statute of 1849 nor that of 1861 avoids such promises, &c., *ab initio*.

A bond has been held a contract within the meaning of these sections (*m*).

A bond is within these sections.

Where the bankrupt was liable on contracts in respect of property, which the assignees refused to accept, such contracts, except as to breaches actually committed, and on which the damages were liquidated before the bankruptcy, were not in general proveable under the bankruptcy, and the bankrupt remained liable on them. Thus, as to leases of lands where the rent and covenants were onerous, this case is provided for by the 145th section of the Act of 1849. (*See ante, Lands subject to Rents, &c.*)

Case of onerous leases provided for by sect. 145 of the Act of 1849.

Where there was no evidence of the acceptance of railway shares of the bankrupt by the assignees, the bankrupt has been held to continue liable for the future calls; for, as the property in the shares continued in the bankrupt, the claim for calls due after the bankruptcy was held not barred by the certificate, inasmuch as

Where railway shares not accepted by assignees, bankrupt held liable for future calls.

(*l*) *Goldsmid v. Hampton*, 5 C. B., N. S. 94; 27 L. J., C. P. 286.

(*m*) *Kidson v. Turner*, 3 H. & N. 581; 27 L. J., Ex. 492.

CHAP. XVII.

they were not proveable as a debt due in futuro, under 12 & 13 Vict. c. 106, s. 172, nor as a contingent debt under sect. 177 (n). It seems, however, more than questionable, whether a claim might not be entered under the 178th section in respect of these calls. (*See ante, Proof of Debt, where this case is discussed.*)

Apprentices discharged by master's bankruptcy.

Bankruptcy discharges the indentures of the bankrupt's apprentices, for (by 12 & 13 Vict. c. 106, s. 170, p. 593, *ante*) where any person shall have been an apprentice to a bankrupt at the time of the filing of a petition for adjudication of bankruptcy, or the issuing of a fiat in bankruptcy, the filing of such petition or the issuing of such fiat shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound. And the indentures of apprenticeship are discharged by the issuing of the fiat or filing the petition for adjudication of bankruptcy against the master, notwithstanding it is afterwards annulled by an agreement between the bankrupt and his creditors for a composition(o).

Although fiat afterwards annulled.

By 6 & 7 Vict. c. 73, s. 5, a clerk bound to attorney or solicitor, who becomes bankrupt, &c., to be discharged or assigned to other person.

And by 6 & 7 Vict. c. 73, s. 5, in case any attorney or solicitor to whom any clerk shall be bound by contract in writing as aforesaid shall, before the end or determination of such contract, become bankrupt, or take the benefit of any act for the relief of insolvent debtors, or be imprisoned for debt and remain in prison for the space of twenty-one days, it shall be lawful for any of the said courts of law or equity wherein such attorney or solicitor is admitted as aforesaid, upon the application of such clerk, to order and direct the said contract to be discharged, or assigned to such person, upon such terms, and in such manner, as the said court shall think fit.

Bankrupt may plead to action barred by discharge, "cause of action accrued before bankruptcy."

In actions against the bankrupt for any cause of action barred by the order of discharge, he may, by the 161st sect. of the Act of 1861, plead in general that the cause of action occurred before he became a bankrupt, and may give this act and the special matter in evidence; and such bankrupt's certificate shall be sufficient evidence of the trading, bankruptcy, fiat or petition for adjudication, and other proceedings precedent to the obtaining such certificate.

A very similar enactment was contained in the 205th sect. of the Act of 1849.

Plea of bankruptcy under sect. 161 of the

This general plea of bankruptcy must pursue the words of the statute, and conclude to the country (p), and can be pleaded only

(n) *South Staffordshire Railway v. Burnside*, 5 Exch. 129; 20 L. J., Exch. 120; 6 Railway Cas. 611.

(o) *Allen v. Coster*, 1 Beav. 274.

(p) *Sheen v. Garrett*, 4 Moore & P. 525.

CHAP. XVII.

in cases where the bankruptcy happened before the commencement of the action (*q*), and the certificate was obtained before plea pleaded (*r*). But where both the bankruptcy and certificate are after action brought, the plea must be special. So, where a surety brings an action for money paid by him after the filing of the petition for adjudication, the plea must be special (*s*).

Where a bill in equity seeks an order for a personal performance of a duty beyond a mere money-payment, the bankruptcy of a sole defendant is no ground for a plea in bar (*t*).

Though the statute only directs, that in case the bankrupt *shall be arrested, or an action shall be brought against him for a debt, &c.,* barred by his certificate, he shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became bankrupt, &c., and so in terms only applies to the case of his arrest, or of an action being commenced against him, it has been held, that in any stage of the proceedings he is entitled to be freed from further molestation. So, if the cause of action be barred by the certificate, but the certificate is not obtained until after plea pleaded, it ought to be pleaded special *puis darrein continuance*. But where the certificate was obtained after issue and before judgment, and the bankrupt was then rendered by his bail, he was held entitled to his discharge in a summary way, although he had not pleaded his certificate *puis darrein continuance* (*u*). But the court will not interfere on motion to discharge a certificated bankrupt, who has been arrested and has given bail, but only when he is in custody (*v*).

Where the bankrupt was taken under an attachment for not performing an award, the court refused to discharge him without giving the other party time to show that the certificate was fraudulently obtained (*x*). So also, where the judgment was entered up in Trinity term, and execution issued in Michaelmas term, and the bankrupts obtained their certificate on the same day the sheriff's officer levied, and the debt and costs were paid into court under a judge's order, to abide the event of a motion, the court refused to interfere, by ordering the money to be paid out of court, but left the parties to their *auditâ querelâ* (*y*). And if a certificate

Act of 1861, applies only where action begun after bankruptcy. But plea must be special, where bankruptcy and certificate both after action.

Bankruptcy of sole defendant, no good plea in bar, where.

Bankrupt entitled to discharge in any stage of proceedings.

Certificate, if not granted till after plea pleaded, must be pleaded specially *puis darrein continuance*.

Court will not discharge a bankrupt released on bail.

(*q*) *Tower v. Cameron*, 6 East, 413; see *Charlton v. King*, 4 T. R. 156; *Pearson v. Fletcher*, 5 Esp. 90.

(*r*) *Harris v. James*, 9 East, 82.

(*s*) *Stedman v. Martinnant*, 12 East, 664.

(*t*) *Pepper v. Henzell*, 13 W. R. 962.

(*u*) *Humphreys v. Knight*, 6 Bing. 572;

4 Moore & P. 370; see *Oswald v. Williams*, 5 Dowl. 159.

(*v*) *Summers v. Jones*, 6 Dowl. 139; 3 Mon. & A. 400.

(*x*) *Nowers v. Colman*, Buck, 5.

(*y*) *Hanson v. Blakey*, 1 M. & P. 261; 4 Bing. 493; see *Ex parte Culliford*, 8 B. & C. 220.

CHAP. XVII.

Where certificate cannot be pleaded *puis darrein continuance*, court will yet stay proceedings.

Bankrupt, after discharge or certificate obtained, may buy assets from assignees.

Re Ward.

Death of bankrupt before fiat suspends petition for adjudication; where he dies after fiat, court may proceed as in his lifetime. Joint fiat amended by omitting name

or order of discharge has been obtained, and it is from any cause impossible or improper to plead it *puis darrein continuance*, the court in which the action is brought will, in such case, before judgment, stay proceedings in the action, exercising its discretion however as to the costs (z). But the certificate or order of discharge can never be given in evidence under the general issue (a).

Under the former acts, *e. g.* under the 201st sect. of the Act of 1849, now repealed, a certificate granted in certain circumstances was invalid; matters invalidating the certificate ought, it was held, to be given in evidence under the *similiter* to the general plea of bankruptcy; for, as the general plea concluded to the country, a special replication to it would be bad (b). But where the bankruptcy is pleaded specially, they must have been made the subject of a special replication.

A bankrupt having received his order of discharge or certificate is not precluded from dealing *bonâ fide* with his assignees for the purchase of any portion or the whole residue of the assets of the bankruptcy: thus a bankrupt who had obtained his certificate contracted *bonâ fide* with the creditors' assignee for the purchase of some reversionary property belonging to the bankrupt estate, the reversion fell in before the purchase-money had been paid, and the official assignee refused to recognize the sale: but it was held, that the sale was nevertheless valid (c).

The bankrupt will not be allowed out of his estate the costs of resisting an unsuccessful opposition to his order of discharge, nor of defending criminal proceedings unsuccessfully prosecuted against him (d).

As to criminal proceedings against a bankrupt, *see post, Penal Clauses.*

Death of Bankrupt.—If the bankrupt dies before adjudication the petition for adjudication cannot proceed (e). But if he dies after adjudication, the court acting in prosecution of the petition for adjudication may proceed, as it might have done, had he been living. (12 & 13 Vict. c. 106, s. 116.) One of the bankrupts in a joint fiat died before adjudication; the fiat was ordered to be amended by omitting his name (f). Where he had presented a petition to supersede the commission, and died before

(z) *Sadler v. Cleaver*, 7 Bing. 769.

(a) *Gowland v. Warren*, 1 Camp. 362.

(b) *Wilson v. Kemp*, 2 M. & S. 549;
Hughes v. Morley, 1 B. & Al. 22.

(c) *Re Ward's Legacy*, 26 Beav. 207;

5 Jur., N. S. 164.

(d) *Re Woollard*, 12 W. R. 550.

(e) *Ex parte Beale*, 2 V. & B. 29.

(f) *Ex parte Hall*, De G. 332.

he had surrendered, and the petition was revived by his personal representatives, the court thought, that, as the surrender was prevented by the act of God, the same order should be made as if he had actually surrendered (*g*). And where a bankrupt dies either before or after the declaration of a dividend sufficient to entitle him to an allowance, the right vests in his personal representative (*h*). Where a person who had been adjudged bankrupt, but whose bankruptcy had been annulled, died pending an appeal from the order annulling the adjudication, it was held that the court had lost all jurisdiction (*i*).

CHAP. XVII.

of deceased bankrupt.

Ex parte Whittington.

Right to allowance vests in personal representative of bankrupt.

Death of bankrupt, pending appeal from order annulling fiat, puts an end to jurisdiction of court.

(*g*) *Ex parte Whittington*, Buck, 235.

(*h*) *Ex parte Safford*, 2 Glyn & J. 128.

(*i*) *Ex parte Bianconi*, 10 L. T., N. S.

283.

CHAPTER XVIII.

ORDER OF DISCHARGE.

CHAP. XVIII.

Certificate of conformity under the Act of 1849.

UNDER the Act of 1849 the bankrupt might obtain his discharge from his debts proveable under the bankruptcy, by means of what was called a certificate of conformity, if he had in all things conformed to the law of bankruptcy by making a full discovery of his dealings and effects, and had behaved himself before and after his bankruptcy in the way of his trade in a manner which was not such as to disentitle him to such certificate, in the opinion of the court, to whom a very large discretion in the matter was left, subject, however, to certain rules which absolutely forbade the grant in certain cases.

Formerly, the grant or refusal of a certificate of conformity lay in the first instance with the creditors who voted on the matter, and the vote of the latter was then in general confirmed by the court, in the absence of any strong reason to the contrary.

Three classes of certificates under the Act of 1849.

Under the Act of 1849, certificates were of three classes; of the first, if the bankruptcy arose wholly from unavoidable losses or misfortunes; of the second, if it arose not wholly from unavoidable losses, &c.; of the third, if it did not arise from unavoidable losses, &c.

By the Act of 1861 classification of certificates abolished; but if there has been suspension of discharge, order for, to state reasons of suspension, &c.

By the Act of 1861, s. 157, from and after the commencement of this act all classification of certificates shall be abolished; and in every case where the discharge of a bankrupt shall be suspended, such discharge, when allowed, shall simply state the period for which it was suspended, and the reasons for such suspension; and if the bankrupt shall have been sentenced to imprisonment by any court under the provisions of this act, the discharge shall also set forth the fact of such sentence and the period of such imprisonment. (See Forms, General Order, 12th October, 1861, Schedules 17 and 18. County Court Orders, 1st July, 1863, Schedules 78, 79.)

Proceedings in bankruptcy may be suspended by creditors in meeting.

By sect. 110, if the creditors at a meeting properly called and adjourned shall, by a proper majority, resolve that proceedings in bankruptcy be suspended, and the estate of the bankrupt wound up, the bankrupt is empowered, having made a full discovery of

his estate, to apply immediately for an order of discharge. It does not seem, however, that he is of necessity entitled to the grant of such order; and in investigating this matter the court will, it seems, be bound by the same rules as in cases where the bankruptcy proceeds in the ordinary (*a*) way. (See section 159, and comments, *post*.) It has been held, that an application for an order of discharge, under sect. 110 of the Act of 1861, must be dealt with like an application under the 159th section, and the bankrupt is subject to be examined and dealt with in the mode prescribed by the latter section (*b*).

CHAP. XVIII.
Bankrupt may apply for order of discharge.

By sect. 140, the public sitting for the last examination of a bankrupt is, unless the court shall otherwise order, the proper time for him to apply for his order of discharge in ordinary cases.

By sect. 158, after the bankrupt has passed his last examination, unless an order of discharge shall have been previously made as hereinbefore provided, the court shall appoint a sitting for the purpose of considering the question of granting to the bankrupt such order. Fourteen days' notice of such sitting shall be given in the London Gazette and such newspapers as the court shall direct. The assignees or any creditor who has proved may be heard against such discharge.

After last examination, court to appoint sitting to consider discharge.

Under the Act of 1849, creditors were also entitled to oppose the certificate, and the word creditors was interpreted to mean creditors who had proved (*c*). A creditor who has proved before the sitting for granting the order of discharge is entitled to oppose the order on appeal, though not having done so actively in the court below; but if he has not proved till after the commissioner has made the order, he is then incapacitated from opposing in the court above (*d*). A creditor, who had not proved, might have been examined as a witness in opposition to the bankrupt's discharge (*e*).

Assignees, &c. may be heard against.

Creditor proving before sitting for discharge, may appeal against, though not opposing below.

By the 140th sect. of the Act of 1849, joint creditors are allowed to prove under a separate adjudication for the purpose, among other matters, of opposing the certificate; this, it is presumed, extends now to enable them to be heard against the order of discharge.

Joint creditors may now prove (*semble*) under separate fiat to oppose discharge.

It was held under the former law that the pendency of an appeal of two partners from a joint adjudication against four was no sufficient ground for adjourning the allowance of the certificate of the

Semble, same partners may be discharged, pending appeal by others

(*a*) Per Turner, L. J., *Ex parte Delamere*, 31 L. J., Bcy. 67; see *Ex parte Jones, re Wilson*, 12 W. R. 221; *Ex parte Castle*, 11 W. R. 113; 7 L. T., N. S. 398.

(*b*) *Re McKerrow*, 13 W. R. 847.

(*c*) *Ex parte Norton*, De G. 504; 11

Jur. 699; *Ex parte Mexton*, 2 M., D. & D. 442; *Re Houghton*, 28 L. T. 177.

(*d*) *Ex parte Burgess and Ex parte Greenwood*, 12 W. R. 924.

(*e*) *Re Hahn and Freystadt*, 30 L. T. 371.

CHAP. XVIII.

against joint
fiat.

Examination
by creditor,
opposing dis-
charge.

*Ex parte Ur-
wick.*

Bankrupt ap-
pearing guilty
of misde-
meanor under
the Act of 1861
to be tried, and
if bankrupt
require it, by
a jury;

and court may
order his in-
dictment in
criminal court.

Re Wilson.

other two (*f*), and there seems no reason to suppose that the law in this respect would now be otherwise.

If a creditor, in opposing the discharge of a bankrupt, examine in a rambling manner, the proper course is not to stop the examination altogether, but to require the creditor to state precisely the issue to which he wishes to examine.

Where in a County Court the judge had taken the course of stopping the examination and had allowed the bankrupt his discharge, the Chancellor, on appeal, ordered the appellants to be at liberty to proceed with the examination, on any matters which were a statutable ground of objection to the order of discharge, furnishing the judge with a definite statement of the charges they intended to make against the bankrupt, and if the statement so made should not present a sufficient *prima facie* case for disallowing the order of discharge, then the judge should allow it without further examination (*g*).

By sect. 159 of the Act of 1861, in granting orders of discharge the following rule shall be observed:—1. If on the hearing of any application for an order of discharge the assignees or any creditor shall allege, and if with or without such allegation the court shall be of opinion, that there is ground for charging the bankrupt with acts or conduct amounting to a misdemeanor under this act, the court shall, if the bankrupt consent thereto, direct a clear statement in writing of the charge to be delivered to the bankrupt, and shall appoint a day for trying the bankrupt on such charge, and, if the bankrupt require it, shall summon a jury for such purpose, and may direct the creditors' assignee, or the official assignee, or any of the creditors of the bankrupt, to act as prosecutor on such trial: provided always, that in every case of accusation against a bankrupt of acts amounting to a misdemeanor, it shall be competent for the court to direct that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice; and in all other cases the order of discharge shall take effect immediately from its date, subject to the appeal therein provided.

Two clauses of this section, numbered 2 and 3 respectively, follow, of which hereafter, but it seems best here to insert some decisions which have been given on this first clause. It was argued in the case of *Re Wilson, Ex parte Dobson* (*h*), that if the bankrupt appearing to be guilty of a misdemeanor consented to be tried by the commissioner, the latter had no jurisdiction to refuse

(*f*) *Ex parte Braggiotti*, 2 De G., M. & G. 964; 22 L. J., Bcy. 76.

(*g*) *Ex parte Urwick*, 10 L. T., N. S. 81.
(*h*) 1 N. R. 75.

himself to proceed to trial, and that it was a necessary condition precedent to the commissioner's directing a trial before the ordinary criminal courts, that he should first have asked the bankrupt's consent to be tried before him the commissioner, and that the bankrupt should have refused such consent; this view, however, was overruled, and it was held to be in the discretion of the commissioner either to ask the consent of the bankrupt, and if he consented to proceed to the trial in the manner prescribed by the act, or, without asking such consent, to direct a prosecution in one of the ordinary criminal courts. In directing such a prosecution or a trial before itself, the court should only act on a *prima facie* case actually made against the bankrupt, such as if unexplained and unrebutted would be sufficient to convict the bankrupt; it ought to place itself in the position of a grand jury when a bill of indictment is laid before them (i), and should not direct a prosecution on a mere case of suspicion, however grave, nor should it do so for the purpose of putting the matter in a course of investigation: it is bound to investigate for itself before directing a prosecution or a trial. Thus, in *Still's case* just cited, the misdemeanors suspected were that he had not upon his last examination discovered all his property, and that he had removed and concealed part of his property, after or within sixty days prior to his adjudication; the case made was, that he had, by a fraudulent and collusive sale, affected before the bankruptcy to dispose of property which, owing to the nature of the sale, remained in fact assets of the bankruptcy, and that for this property he had not in any way accounted under his bankruptcy, but had excluded all notice of the transaction or reference to it. It was held that no prosecution should be directed while it could remain in doubt whether the property in question was or was not property of the bankrupt at the time of the bankruptcy, and that it was a necessary preliminary to the establishment of that fact that there should be a decree setting aside the collusive sale as fraudulent, pending which decree any criminal charge was premature.

It may be remarked that the court has held itself entitled, even after directing a prosecution, to discharge that order on the application of the assignees, upon the bankrupt's offering terms which were for the benefit of the creditors; on the ground that there is nothing illegal in compromising a misdemeanor, though there is in compromising a felony (j); in answer it may be stated that though it be not criminal to compromise a misdemeanor it has never been

In discretion of commissioner either himself to try bankrupt, with his consent or without it, to direct criminal prosecution.

Before ordering latter, court should investigate case against bankrupt.

Re Still.

Court has discharged order for criminal trial, the bankrupt offering terms for benefit of the creditors; not criminal to compromise a misdemeanor, *sed quære.*

(i) *Re Still*, 32 L. J., Bcy. 12; 1 N. R. 112; see also *Ex parte Dobson, re*

Wilson, 32 L. J., Bcy. 1; 11 W. R. 100;

1 N. R. 75; 8 Jur., N. S. 1220.

(j) *Re Wilson*, 32 L. J., Bcy. 1; 11 W. R. 100; 8 Jur., N. S. 1220; 1 N. R. 379.

CHAP. XVIII.

Prosecutor appointed under sect. 159, not to forego prosecution without leave of court. *Semble*, appeal allowed from criminal trial under sect. 159.

looked upon as strictly legitimate, and an action for breach of a *bonâ fide* contract for such a compromise has been held not to lie as founded on a bad consideration (*k*). In the case above cited (*l*), it was, however, held that the person directed to prosecute had no discretion to neglect doing so of his own accord, and that he must come to the court for leave to forego the prosecution. As all orders of the court of bankruptcy are subject to appeal, this provision introduced a strange anomaly in our law, for, if a bankrupt be tried by the court of bankruptcy under this section, there seems nothing to prevent an appeal in this case as well as others, and nothing to prevent the prosecutor appealing as well as the accused. Of course, if a prosecution be directed in the ordinary courts, the trial there will be without appeal, according to the ordinary rule in criminal cases.

As to costs of prosecution ordered by the court, *see post*, *Penal Clauses*.

Discharge dates from its being pronounced.

The date of the order of discharge is the date on which the order is pronounced as presently due to the bankrupt, not the date on which it is actually drawn up (*m*), and property accrued to the bankrupt between the day the order was pronounced, entitling him to his discharge, and the day on which the formal order was drawn up, did not pass to the assignees.

If bankrupt guilty on trial under sect. 159, discharge may be suspended or refused.

By clause 2 of the above-mentioned section, if on such trial by a jury or by the commissioner alone the bankrupt shall be convicted of any offence by this act made a misdemeanor, the commissioner shall, in addition to the punishment awarded for the offence, have power to direct that the order of discharge be either wholly refused or suspended during such time and upon such conditions as he shall think fit.

If bankrupt, though not guilty of misdemeanor, has carried on trade with fictitious capital, &c. ;

Clause 3. If the bankrupt shall not be accused of acts amounting to misdemeanor, or if he shall have been accused and acquitted, but in either case there shall be made, or shall appear to the court to exist, objection to the granting of an immediate discharge, the court shall proceed to consider the conduct of the bankrupt before and after adjudication, and the manner and circumstances in and under which his debts have been contracted ; and if the court shall be of opinion that the bankrupt has carried on trade by means of fictitious capital, or that he could not have had at the time when

(*k*) *Keir v. Leeman*, 9 Q. B. 371 ; see also *Collins v. Blantern*, 2 Wils. 341 ; 1 Smith, L. C. 263 ; *Edgewcombe v. Rodd*, 5 East, 297 ; 4 Blackst. Com., note by

Christian, 136.

(*l*) See note (*j*), ante, p. 951.

(*m*) *Ex parte Bell, re Laforest*, 32 L. J., Bcy. 50 ; 2 N. R. 251.

any of his debts were contracted any reasonable or probable ground of expectation of being able to pay the same, or that, if a trader, he has, with intent to conceal the true state of his affairs, wilfully omitted to keep proper books of account, or, whether trader or not, that his insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due from him, the court may either refuse an order of discharge, or may suspend the same from taking effect for such time as the court may think fit, or may grant an order of discharge subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings or income, which may afterwards become due to the bankrupt, and touching after-acquired property of the bankrupt, or may sentence the bankrupt to be imprisoned for any period of time not exceeding one year from the date of such sentence: Provided always, that no person shall be liable by virtue of this act to any criminal proceeding or penalty in respect of any matter which may have occurred before the passing of this act to which he would not have been liable if this act had not passed.

or not kept books of account; or guilty of rash and hazardous speculation, &c. ;

Court may refuse or suspend discharge; or make order as to after-acquired property of bankrupt, or pass sentence of imprisonment.

This section, as judicially expounded, has rendered obsolete a vast mass of cases under the Act of 1849, as to the grant or refusal or conditional grant or suspension of the bankrupt's certificate; for notwithstanding that the 3rd clause directs the court to consider the conduct of the bankrupt before and after adjudication, and though it is, to say the least, extremely unlikely that any of the particular offences enumerated in the latter part of the clause should occur after adjudication, and impossible that any but one should do so, yet it has been finally determined (*n*), after some doubt (*o*), that the discretion of the court is strictly limited, and that unless it be proved that the bankrupt has committed some one of the offences specially mentioned in the clause, or some misdemeanor, the court has no right to withhold an absolute and unconditional order of discharge, not even if it have been proved that some of his debts were contracted by fraud, or a breach of trust (*p*); and where the court had attached conditions to an order of discharge, and it appeared afterwards that the court had not confined its consideration

Discretion of court under third clause limited.

(*n*) *Re Mew and Thorne, Ex parte Udall*, 31 L. J., Bcy. 87; see also *Re Pearse*, 9 L. T., N. S. 349; *Re Lawrence*, 9 L. T., N. S. 173.

(*o*) See *Ex parte Glass, re Boswall*, 31 L. J., Bcy. 73.

(*p*) *Re Stevens*, 7 L. T., N. S. 649.

CHAP. XVIII. to the offences mentioned in the 159th section, a rehearing was granted (*p*) under the circumstances, it appearing that the court had not considered facts which turned out to be material.

Fictitious capital, what is, *quare*.

The phrase "fictitious capital" has not yet, so far as we are aware, received direct judicial interpretation. It has, however, been decided that money raised by accommodation bills is not of necessity to be deemed capital by that description (*q*).

In the Act of 1849, sect. 256, now repealed, there were classified a certain number of offences, on the proof of any of which the commissioner was bound to refuse or suspend without protection the certificate of the delinquent. Among these offences was one numbered 3 in the section as follows :

If the bankrupt shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors.

It might have been supposed that cases within the earlier branch of this repealed clause, i. e., contracting debts by means of &c., would be included under the new offence ; but, at the same time, if it was intended to include no more than was comprised under this branch of the former enactment, there seems no reason for changing the language of the former enactment, which was clear and intelligible, and substituting what is, to say the least, obscure. Perhaps it is intended to limit the operation of the former enactment to those particular cases of fraud, where the bankrupt obtains money or credit by means of a false statement, that he has or expects to have means of repaying or taking up his liabilities. It has, as already is mentioned, been decided that in general contracting debts by fraud or false pretences is not within the number of offences enumerated under the new clause, and is no ground consequently for refusing or suspending the order of discharge (*r*).

Contracting debts by fraud and false pretences no ground now for refusing, &c., discharge.

Under the Act of 1849 contracting debts without reasonable probability, &c., ground for refusal.

Contracting debts without reasonable probability of being able to pay them was, under the Act of 1849, ground for refusal or suspension of certificate. Thus, bankers continuing to receive deposits, and to issue notes for a period of eighteen months, knowing that their assets were not sufficient to pay five shillings in the pound, was held utterly unjustifiable (*s*).

(*p*) *Re Drinkwater*, 11 W. R. 14 ; 7 L. T., N. S. 300.

(*q*) *Re Snowden*, 12 L. T., N. S. 740.

(*r*) *Re Stevens*, 7 L. T., N. S. 649.

(*s*) *Ex parte Rufford*, 1 De G., M. & G., B. C. 106 ; 2 De G., M. & G. 234 ; 21 L.

J., Bcy. 32. See also *Ex parte Drake*, 30 L. T. 312 ; *Ex parte Woolridge*, 24 L. J., Bcy. 17 ; *Re Griffiths*, 2 Bcy. & In. 116 ; *Ex parte Simond*, 3 Jur., N. S. 424 ; *Ex parte Hollingworth*, 4 De G. & S. 44 ; 20 L. J., Bcy. 13 ; 15 Jur. 914.

Since the Act of 1861, the law as to this offence will be strictly carried out. Thus, a banker, who for a commission accepted bills to a large amount without a reasonable prospect of their being met, was held to have engaged in rash and hazardous speculation within section 159 of the act (*r*). So, again, a bankrupt who was guilty of no offence but that of accepting bills to a considerable amount, his assets being small, for the accommodation of large traders who had befriended him, though he had done so for no pecuniary advantage to himself, was absolutely refused his order of discharge, these being offences against which the Act of 1861 was specially directed (*s*). Again, an auctioneer having misappropriated monies arising from a sale, when he had no probable means of repaying them, and having shortly afterwards become bankrupt, was committed to prison for six months (*t*).

CHAP. XVIII.
 Sect. 159,
 clause 3 of the
 Act of 1861
 strictly ap-
 plied.

But where the debt was contracted before the date of the Act of 1861, though without reasonable expectation of the debtor's being able to pay it, the former law having been repealed, and the offence not having been committed under the new law, an order suspending the bankrupt's order of discharge was reversed (*u*). The exception in the repeal clause of the Act of 1861, of penalties incurred before the passing of the act, does not seem in this case to have been brought to the attention of the Lord Chancellor; but probably it was immaterial, the bankrupt not having been a trader within the older law.

Under the Act of 1849 these words, "contracting debts without reasonable probability, &c." were construed to mean without a reasonable probability, which may reasonably have been supposed by the debtor to exist at the time of contracting the debt (*x*).

Meaning of
 "reasonable
 probability"
 under the Act
 of 1849.

A trader, without adequate capital of his own, made speculative consignments abroad of goods obtained on credit, and he obtained advances on them, with which he paid for previous purchases made in like manner. He was held to have carried on trade by means of fictitious capital, and to be guilty of rash and hazardous speculation (*y*); and having, while being and knowing that he was hopelessly insolvent, obtained goods on credit within three months of his bankruptcy, he was held to have contracted debts without reasonable expectation of being able to pay them.

The wilful omission to keep proper books was also formerly sufficient to induce the court to suspend or refuse a bankrupt's certifi-

Omitting to
 keep proper
 books, ground

(*r*) *Re Braginton*, Law Rep., Ch. Appeals, April 13th, 1866.
 (*s*) *Ex parte Barker*, 12 W. R. 321; see also *Ex parte Harris*, 13 W. R. 275.
 (*t*) *Re Engleheart*, 12 W. R. 387; see also *Ex parte Sparham*, 9 L. T., N. S. 548.
 (*u*) *Ex parte White*, 12 W. R. 390; 9 L. T., N. S. 702.
 (*x*) *Re Mortimore*, 30 L. J., Bcy. 17; 7 Jur., N. S. 320; 9 W. R. 423.
 (*y*) *Re Fryer*, 10 L. T., N. S. 197.

CHAP. XVIII.

under Act of 1849 to suspend, &c., the certificate.

Nature of trade decisive of character of books as "proper."

Under the Act of 1861, wrong intent must appear in not keeping proper books.

"Reckless trading" under the Act of 1849, what.

Trader in difficulties not bound to cease trading.

Question is, had he a prospect of surmounting them.

cate; and it was not sufficient that there should be books, but they must have been properly kept and balanced from time to time (z). A ledger was not considered to be satisfactorily kept unless the accounts were entered continuously, according to their priority, with an index, and without any intervening blank leaves (a). The existence of a cash book, properly kept, was almost a *sine quâ non* for the granting of an immediate certificate (b). The nature, however, of the trade would and will in a great measure determine what were or are *proper* books, and may also be of importance in deciding on the intent with which the omission to keep them must now be accompanied to bring the bankrupt within the clause. So, under the former law it was held, that where the bankrupt was a shipowner, and had only two small vessels, and was not a trader in extensive business, the same importance did not attach to the absence of books as in a case of general dealing (c).

Under the Act of 1849 also, if the insolvency had occurred by reason of rash or hazardous speculation in the case of a trader, the course of conduct which led to that result was ground for refusing or suspending his certificate under the name of "reckless trading;" and there are some former decisions which may guide the courts in their determination as to what will come within the words of the present statute, though each case must of course from the nature of the subject matter be dealt with chiefly on its own peculiar circumstances. Thus, when a cotton spinner had engaged in several other trades and undertakings, but it did not appear that he was at the time insolvent, this did not constitute reckless trading (d). Dealing in foreign stock and railway shares may, under circumstances, become reckless trading; and where the bankrupt had, within a year before his bankruptcy, lost more than 200*l.* in contracts for the purchase of Peruvian bonds, and more than 200*l.* in the purchase of railway shares, and such contracts were not to be performed within a week after the contract, and bonds or shares were not actually transferred or delivered in pursuance of the contract, the certificate was suspended for one year as a case of reckless trading (e). A trader is not bound to leave off trading merely because he is in difficulties, and upon winding up his affairs may prove to be insolvent; the question is, whether he has continued trading after there ceased to be any reasonable prospect of surmounting his difficulties (f).

(z) *Re Smart*, Fon. B. C. 14.

(a) *Re Tracey*, Ib. 13.

(b) *Ex parte Carter*, Ib. 83; *Re Sparrow*, Ib. 69.

(c) *Ex parte Hodgson*, 3 De G., M. & G. 547; 1 De G., M. & G., B. C. 315.

(d) *Ex parte Wakefield*, 15 Jur. 961; 4 De G. & S. 18.

(e) *Re Buckland*, Fon. B. C. 250; see also *Ex parte Turner*, 4 Jur., N. S. 470; *Re Preager*, 27 L. T. 26.

(f) *Ex parte Johnson*, 4 De G. & S. 25;

Under the Act of 1861, it has been held, that though a venture turned out highly detrimental, yet if the bankrupt at the time of making it possessed property beyond the amount of his liabilities, the making it did not bring him within the clause (g). It would, it seems, be otherwise if the trade were carried on with borrowed money, the loss of which would render the trader insolvent (h).

CHAP. XVIII.

Embarking in ventures, unless with borrowed money beyond means of repaying, not within clause.

With regard to extravagance in living, it has been held that the supposed necessity for keeping up appearances is no excuse (i).

The entire clause being in its nature penal must be read strictly, and therefore a frivolous defence to an action, not for a debt or money demand, but for damages *in tort*, is not an offence within its meaning (k); and it seems reasonably clear that a frivolous or vexatious action, brought to annoy a particular creditor by the bankrupt, will not bring the latter within this clause. It has been decided that damages in an action for breach of promise of marriage, although proveable under a bankruptcy, do not constitute a debt which will bring the defendant within the penal operation of the clause (sect. 159) (l).

Clause being penal, construed strictly.

The offence of vexatiously defending an action, &c. would, if committed by a bankrupt under the Act of 1849, have been good grounds to induce the court to refuse or suspend his certificate. Thus, when the bankrupt's general conduct was highly culpable, and he was guilty of a vexatious defence to an action by pleading eight special pleas, each alleging what was untrue, the certificate was of the third class, and suspended for twelve months (m). A bankrupt is not justified in pleading special pleas, although he may have a defence in equity (n). The bankrupt when in difficulties was sued, and he placed himself in the hands of the bulk of his creditors, who defended the action in his name, and in order to gain time for an arrangement pleaded twenty pleas without having any substantial defence: it was held, that this did not disentitle the bankrupt to his certificate for having vexatiously defended the action (o).

Vexatious defence of action, formerly ground to refuse certificate.

The commissioner, when he comes to a conclusion that the bankrupt is guilty of some offence under this section, is not bound, it

Court not bound to state reasons for

Ex parte Dornford, 15 Jur. 278; 4 De G. & S. 29; 20 L. J., Bcy. 7.

(g) *Ex parte Evans*, 31 L. J., Bcy. 63; 6 L. T., N. S. 519; see also *Ex parte Downman*, 32 L. J., Bcy. 49; 9 Jur., N. S. 811; 11 W. R. 577.

(h) *Re Fryer*, 10 L. T., N. S. 197.

(i) *Re Stevens*, 7 L. T., N. S. 649; see also on this offence, *Ex parte Sparham*, 9 L. T., N. S. 548.

(k) *Ex parte Crabtree*, 12 W. R. 768;

Re Keat, 6 L. T., N. S. 837; *Re Boswall*, 31 L. J., Bcy. 73; 6 L. T., N. S. 28.

(l) *Re William Billingham*, 13 L. T., N. S. 25.

(m) *Re Pownall*, Fon. B. C. 221.

(n) *Ib.*

(o) *Ex parte Johnson*, 4 De G. & S. 25; 15 Jur. 185; 20 L. J., Bcy. 6. See also *Re Smith*, 29 L. T. 147; *Ex parte Blackhurst*, 4 Jur., N. S. 1065.

CHAP. XVIII.

concluding
bankrupt
within clause.

To support
refusal, &c.,
under sect. 159
of the Act of
1861, proof
required of
offences.

Discharge
sometimes sus-
pended on
appeal till
satisfactory
accounts fur-
nished.

No power of
annexing con-
ditions to dis-
charge except
for enumerated
offences.

would seem, to state what his grounds for such conclusion are; and if he do state them, and they are on appeal found insufficient, it would seem, on principle, that the Court of Appeal ought to go into the whole case presented to the commissioner before they overrule or alter his order, for he may have omitted to mention one sufficient ground for his decision, because already satisfied on another ground which he considered sufficient, and this seems to have been the rule by which the Court of Appeal has felt itself usually bound. Thus, under the 256th section of the Act of 1849, the commissioner had suspended the bankrupt's certificate on the ground that he was guilty of the second, seventh and ninth of the offences contained in that section, the Court of Appeal thought the evidence on these points not sufficient, but finding the bankrupt guilty of the fifth offence in the same section, dismissed the appeal, with the alternative of refusing the certificate altogether, and discharging the commissioner's order (*o*). But, under the 159th section, to enable the court to refuse or suspend or annex conditions to the order of discharge, some of the offences mentioned must be actually proved to have been committed, a strong case of suspicion is not sufficient in default of actual proof (*p*).

There have been cases, however, where, on appeal from an order granting or refusing an order of discharge, it has been found that the accounts were not satisfactory, and the order has been suspended till more satisfactory accounts were furnished (*q*); this appears an anomaly, but the true view of these cases seems to be that these appeals are more strictly from the order passing the bankrupt's last examination than from that granting him his order of discharge; or, on the other hand, from the order suspending his examination *sine die* than from that refusing his order of discharge, and thus the whole of the law on the matter may be harmonised.

The power of annexing conditions to the order of discharge is co-extensive only with that of refusing or suspending it, and unless some of the offences above mentioned be committed no such power exists now (*r*), notwithstanding some cases which seem to rule otherwise (*s*). Under the former law, as the discretion to grant or refuse certificate was general, so was also the discretion to annex conditions to the certificate, but the power was rarely used. It was held that the court would not annex a condition

(*o*) *Re Warwick*, 6 De G., M. & G. 749; 24 L. J., Bey. 23.

(*p*) *Ex parte Abbott*, 8 L. T., N. S. 813.

(*q*) *Ex parte Clark*, 8 L. T., N. S.

814; *Ex parte Crabtree*, coram L. C., Apr. 30th, 1864.

(*r*) *Re Ellison*, 8 L. T., N. S. 407.

(*s*) See *Re Moss*, 7 L. T., N. S. 866.

that payment should be made out of future property, where the bankrupt had no probability of any future property at the time the debts were contracted (*t*), and in general the court has expressed a strong opinion against limiting a certificate in this way (*u*); it was, however, occasionally done formerly, and since persons not in trade may now be bankrupt, and their debts are often contracted on the faith of future property, it will probably now be done more frequently in cases where any of the offences which form a necessary condition to the exercise of the power are shown to have been committed (*x*). It has been held, however, that where the bankrupt has no probability of future property, but an annual payment made to him voluntarily from year to year by a relative, no condition to set aside a portion of it will be annexed to his order of discharge (*y*). The most ordinary form of condition is, that a certain sum shall be paid yearly out of the bankrupt's salary to his assignees, and the court will not, without good reason, annex a condition in another form (*z*).

The court will not annex any condition to its order for the bankrupt's release from custody after he has obtained his order of discharge (*a*).

Section 256 of the Act of 1849 is repealed, and some of the offences in it, or offences very similar to them, have been made misdemeanors (*see sect. 221 of the Act of 1849, post, Penal Clauses*); and the section just under comment seems to have been intended in substitution for the residue, under the repealed (256th) section of the former act. Under the old clause, if the certificate were suspended, it was obligatory on the commissioners to refuse protection in the mean time; in this clause there is nothing said of protection, and it seems that, under this clause, the court may *either* refuse or suspend, &c. order of discharge, *or* sentence the bankrupt to imprisonment, but may not do both.

To this effect was *Re Marks*, in which it was held that the commissioner had no power to suspend the order of discharge, and also to imprison for six months, on the ground of the bankrupt's having incurred debts without reasonable expectation of paying them, the power of the court in this respect being, under section 159 of the Act of 1861, alternative, not cumulative (*b*).

CHAP. XVIII.

Formerly condition seldom annexed for payment out of future property.

Will now, *semble*, be more often done, where enumerated offences exist.

Payment out of future property when ordered, directed to be made to assignees.

Court will not annex condition to order of discharge, if once obtained.

Power of court, under sect. 159 of the Act of 1861, to suspend, &c., discharge or imprison, not cumulative.

Re Marks.

(*t*) *Re Delafield*, Fonb. B. C. 132.

(*u*) See *Ex parte Harnden*, 3 De G. & J. 489; *Ex parte Culhane*, 25 L. J., Bcy. 60; 2 Jur., N. S. 863; *Ex parte Anderton*, 1 De G. & J. 298; *Ex parte Hammond*, 6 De G., M. & G. 699.

(*x*) See *Re Inman*, 6 L. T., N. S. 665;

Re Anderson, Ib. 837.

(*y*) *Re Townshend*, 11 W. R. 194. But see *Re Wemyss*, 12 L. T., N. S. 507.

(*z*) *Re Scudamore*, 8 L. T., N. S. 212.

(*a*) *Ex parte Tubb*, 11 L. T., N. S. 222.

(*b*) *Re Marks*, 14 W. R. 321.

CHAP. XVIII.

Condonation of fraud by person defrauded, no ground to prevent refusal of certificate.

Creditors, who have proved, by sect. 182 of the Act of 1849 forbidden to sue, &c., the bankrupt.

Power to obtain Ba certificate, repealed.

Now difficult to enforce conditions annexed to discharge.

Semble, only mode now to ask court to seize assets in hands of bankrupt.

Condonation of a fraud by the person defrauded was, even under the former law, held no ground for the granting a certificate, the refusal being dictated on the grounds of public policy, and the judgment left to the commissioner, not to the creditor (*a*); this, it is apprehended, must still be so.

It must be observed that the refusal of an order of discharge will not now, at least so far as the present writer can judge, be attended with consequences in any degree so practically objectionable to the bankrupt as formerly; for it does not appear that, except as far as creditors, who have not proved, are concerned, he can be personally molested, all the creditors who have proved being, by the 182nd section of the Act of 1849, precluded from suing or taking the bankrupt in execution (*b*). Under the former law, by sect. 257 of the Act of 1849, now repealed, the assignees or any creditor, who had proved, might, if the certificate of the bankrupt were refused or suspended, obtain, by application to the commissioner, a certificate, commonly termed, from the schedule of the act which contained the form of it, a Ba certificate, for the amount of the balance of his debt proved, after deducting so much as he had for the time being received by way of dividend (in the case of a creditor); or for the whole sum of the debts proved, after deducting the dividends paid (in the case of the assignees), which certificate had the effect of a judgment of one of the superior courts of common law at Westminster, and enabled the assignees or the creditor who obtained it to take the bankrupt in execution, and hold him until the allowance of his certificate, and in such case the court alone could order his discharge before the allowance of the certificate (*c*). This procedure furnished an effective means of compelling the performance of any conditions annexed to a bankrupt's certificate, for if the condition were broken, the Ba certificate might, it seems, have been obtained; now it is difficult to know how effectually to enforce the performance of conditions annexed to the order of discharge. The only course that suggests itself to the present writer is, that the assignees should be put in motion to require the court, on proof that the condition is broken, to direct the messenger to seize anything that may have come to the hands of the bankrupt as assets of the bankruptcy. As the condition is generally that the bankrupt shall pay at stated times a portion of any salary he may be in receipt of to

(*a*) *Ex parte Selby*, 25 L. J., Bcy. 13; 2 Jur., N. S. 29.

(*b*) See ante, Consequences of Proof.

(*c*) *Ex parte Paine*, 28 L. T. 89; see section 259 of the Act of 1849, repealed.

the assignees, if the order can be obtained before the bankrupt has spent or otherwise made away with the portion of salary received by him, this method may be effectual; but it is, to say the least, a cumbrous, and will in most cases probably be wholly insufficient for its object. It has been attempted to enforce the performance of such a condition in the manner which used to be adopted in a somewhat similar state of things in the Court for the Relief of Insolvent Debtors, that is to say, by the creditors' assignee obtaining a rule calling on the bankrupt to show cause why he should not be committed to prison for wilfully breaking the condition annexed to his order of discharge, and then procuring the rule to be made absolute. Mr. Goulburn, indeed, granted the rule nisi (*d*), but, on the argument on showing cause, it was held that there could be no imperative order on the bankrupt to fulfil the condition, there not being any authority, as it seems, in the court to make such an imperative order; and, in the absence of such authority, the court had no jurisdiction to commit the bankrupt to prison (*e*). He expressed, indeed, a doubt, which seems well warranted, whether the order of discharge could under the circumstances be pleaded in bar of an action at law, according to the statement in the reporter's head note to the case, or, as would rather seem, from the body of the report, whether an action would not lie on the bankrupt's implied promise to perform the condition; but either view of the commissioner's opinion would lead to little practical result, even if undoubtedly correct, for as to the former view no creditor who had proved could sue or take in execution the debtor for his debt; and as to the latter, it seems most probable that the salary would be spent before judgment could be obtained in the action.

Attempt to enforce condition by rule nisi to commit to prison for breach of condition.

Re Yeo.

Where a bankrupt's last examination has been adjourned *sine die*, there is implied in the order for the adjournment a right on the part of the bankrupt to apply to have a day fixed for passing his last examination, although the words "liberty to apply" are not contained in the order (*f*).

In order adjourning *sine die* bankrupt's last examination, liberty to apply implied, if not expressed.

Under the former law, where the certificate had been suspended, and the bankrupt died, before the time for granting it arrived, it was granted on the application of his representatives; but his death was stated on the certificate (*g*); and it is supposed that a similar course will be pursued under the Act of 1861.

Where bankrupt dies before grant of certificate, his representatives may apply for, *semble*.

(*d*) *Ex parte the Assignees, re Yeo*, 12 W. R. 58.

(*f*) *Re Tripp*, 13 L. T., N. S. 724.

(*e*) 12 W. R. 90.

(*g*) *Re Neale*, Fonb. B. C. 206.

CHAP. XVIII.

Upon the commissioner allowing the certificate, a memorandum thereof is made and placed among the proceedings. (*See the form, post, Appendix.*)

Allowance of certificate to be advertised;

and on expiration of time for appealing, certificate to be delivered to bankrupt.

Where certificates refused under former law, court may now, under the Act of 1861, on application, grant discharge.

Quære, whether court's discretion, under sect. 160 of the Act of 1861, absolute or limited, as under sect. 159.

Ex parte Matheson.

When the certificate is allowed, the allowance is advertised in the Gazette, and in two local newspapers (*see sect. 172 of the Act of 1861*), and by rule 60 of the General Order of 19th October, 1852, the notice of the allowance of a certificate of conformity shall be advertised by the messenger of the court in the London Gazette ten days or more before the expiration of the time allowed by the statute for entering an appeal against the allowance, and such notice shall specify the class of the certificate and the time of suspension (if any), and the conditions (if any) annexed to the allowance: and no certificate of conformity shall be delivered to the bankrupt, except on production of the Gazette containing such advertisement; and by rule 61, after the expiration of the time allowed for entering an appeal against the allowance of a certificate, and on being satisfied that no appeal has been entered, the registrar of the court shall deliver such certificate to the bankrupt, and shall certify the allowance to the chief registrar. The orders issued previously to the Statute of 1861, are, as will have been seen, somewhat modified by that statute, inasmuch as advertisement is now required in two local newspapers as well as in the Gazette, and the classification of certificate is abolished; but in other respects they will, it is presumed, retain their effect under rule 36 of the General Orders of the 12th October, 1861.

By sect. 160 of the Act of 1861, with respect to all persons heretofore bankrupt, and whose certificates of conformity shall have been refused, it shall be lawful for the court, at any time after the expiration of three years from the time of, and notwithstanding such refusal, to hear and determine the application of any such bankrupt for an order of discharge, and thereupon, if the court shall so think fit, to grant an order of discharge, either absolute or subject to any condition or conditions, in the same manner as if the bankruptcy of such applicant had taken place after the commencement of that act.

It seems doubtful under this clause whether the discretion of the court is limited in the same manner as it is under the 159th sect. with regard to a bankruptcy since the Act of 1861. The words "if the court shall think fit" seems to imply an absolute discretion, but on the other hand the words "in the same manner, &c." to the end of the section may be held to limit the discretion. In one case under this section, which was the subject of much discussion, the

court of appeal seems to have considered its discretion unfettered by the conditions of the 159th section (*g*); but the case was decided while it was still in doubt whether those conditions bound the discretion of the court even in the case of a bankruptcy falling directly within the Act of 1861 or not. In the same case it was held that the exception in the repeal clause of the Act of 1861, *i. e.*, section 230, of *penalties incurred* (*h*), in respect of any transaction, act, matter or thing done or existing prior to the passing of the act, did not extend to the compulsory refusal of certificate under the 201st section of the Act of 1849, so as to prevent the bankrupt, who under that section had been refused his certificate, from obtaining it under the 160th section of the Act of 1861, now under comment.

In a later case (*i*), the late Lord Chancellor at first doubted whether any jurisdiction arose under the section, where the offences, on the ground of which the certificate had been refused, remained offences punishable with refusal of certificate under the Act of 1861; but he ultimately went into the merits, and having some doubt whether the offences might not be disproved, he dismissed the appeal, with liberty to make a new application under the section in question on new evidence. On an application for order of discharge under section 160 by a bankrupt, whose certificate had been refused, Mr. Evans, at the instance of the assignees, who opposed the discharge, refused to entertain the bankrupt's application, except upon affidavit denying that he had fraudulently kept out of the way (*j*). In this case the learned commissioner seems to have thought his discretion unfettered.

Ex parte Wilcox.

By section 161, the order of discharge shall, upon taking effect, discharge the bankrupt from all debts, claims or demands, proveable under his bankruptcy, save as herein otherwise provided; and if thereafter he shall be arrested, or any action shall be brought against him for any such debt, claim or demand, he shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence; and the order of discharge shall be sufficient evidence of the bankruptcy, and the proceedings precedent to the order of discharge.

Order of discharge releases bankrupt from debts, &c., proveable under bankruptcy.

This is substantially the same enactment as the earlier part of

Order of discharge to be

(*g*) *Ex parte Matheson*, 31 L. J., Bcy. 23; *Re Fenn*, 13 W. R. 695; *Re Nicholson*, 11 L. T., N. S. 391; see also *Ex parte Martyn*, 5 L. T., N. S. 466.

(*h*) See also *Ex parte Bond*, 31 L. J.,

Bcy. 47.

(*i*) *Ex parte Wilcox*, L. C., Jan. 13th, 1864.

(*j*) *Ex parte Dell*, Nov. 14th and 28th, 1861, 5 L. T., N. S. 463.

CHAP. XVIII. section 200 of the Act of 1849. The old enactment was held to discharge the goods as well as the person of the bankrupt (*k*).

evidence of
bankruptcy,
&c.

Discharge, a
bar of all
debts con-
tracted in
England and
also elsewhere;

but foreign or
colonial dis-
charge no bar
to action by
English sub-
ject on con-
tract made
here.

Certificate no
bar to action
of tort.

Secus, if cause
of action
ground for
proof and
proved in
bankruptcy.

Breaches of
trust.

Breach of duty
by attorney,
how far certi-
ficate a bar for,
quære.

What debts are proveable has already been considered. (*See Proof of Debts.*) And the order of discharge will be a bar, not only to actions for debts contracted in England, but to actions for the debts of Scotch creditors (*l*), of Irish creditors, and of all foreign creditors (*m*). And, on the other hand, a certificate obtained by a bankrupt in Ireland, under 6 & 7 Will. 4, c. 14 (the Irish Bankrupt Act), operates as a bar as well of debts due from the bankrupt in England and Scotland, as of those incurred by him in Ireland (*n*); and a certificate obtained by a bankrupt in a foreign country will be a bar to an action in this country for a debt contracted in the foreign country (*o*): but it will be no bar to an action for a debt contracted here (*p*); and it has been held that the discharge of an insolvent from his debts under a sequestration operating under an act of a colonial legislature, having power from the Imperial legislature to make laws, is no answer to an action by an English subject, on a contract made and to be performed in England (*q*).

But the certificate was, and the order of discharge is, no bar to an action for a tort (*r*), though committed before the bankruptcy, not even though the same cause of action might be ground for an action of assumpsit (*s*), and might, as such, have been made the subject of proof; unless the demand has in fact been proved, in which case the creditor will be held to have elected his remedy, and to have waived the tort. Thus a breach of trust committed by the bankrupt ought to be proved by him or his co-trustees against his estate; but if it be not, he will remain liable on it notwithstanding his certificate (*t*). So an attachment against an attorney for not paying money to discharge a liability for a breach of duty was not prevented by his certificate, under the following circumstances:—An attorney had sold out a sum of stock, under an authority obtained from a client for the purpose of investing the proceeds on mortgage, which he fraudulently neglected to do, and an order of a court of law was obtained directing him to reinvest the money,

(*k*) *Davis v. Shapley*, 1 B. & Ad. 54.

(*l*) *Royal Bank of Scotland v. Cuthbert*, 1 Rose, 462.

(*m*) *Odwin v. Forbes*, Buck, 57.

(*n*) *Fergusson v. Spencer*, 2 Scott, N. R. 229; 1 Man. & Gr. 987.

(*o*) *Potter v. Brown*, 5 East, 124; *Balantine v. Golding*, Cooke, 487.

(*p*) *Smith v. Buchanan*, 1 East, 6; *Quin v. Keefe*, 2 H. Bl. 553; *Shallcross v. Dyssart*, 2 Glyn & J. 87; *Armani v. Castrique*, 13 M. & W. 443; 2 D. & L. 435; 14 L.

J., Exch. 36; *Bartlett v. Hodges*, 8 Jur., N. S. 52.

(*q*) *Bartley v. Hodges*, 30 L. J., Q. B. 352.

(*r*) *Parker v. Norton*, 6 T. R. 695; and see *De Tastet v. Sharpe*, 3 Mad. 51; Buck, 153; *Goodtitle v. North*, 2 Doug. 584; see *Gulliver v. Drinkwater*, 2 T. R. 261.

(*s*) *Parker v. Crole*, 2 M. & P. 150; 5 Bing. 63.

(*t*) *Orrett v. Corser*, 21 Beav. 52.

and to pay costs by a certain day, and on default that an attachment should issue, and the attorney did not invest the stock, but became bankrupt the day after the time mentioned for his so doing; it was held that his certificate was no bar to the issue of the attachment (*u*). Much stress was in this case laid on the fact that the bankruptcy seemed as though intended simply for the purpose of evading the order of the court. If this were so the proper course would seem to have been to direct proceedings to be taken to annul the bankruptcy, or the facts supporting that hypothesis ought to have been given in evidence on the hearing of the order for certificate. As the case stands it is difficult to reconcile it with the general current of decision. The order of the court was a simple order for the payment of money, and the attachment only a means for enforcing such payment (*x*). It seems, however, from the cases generally, that the certificate formerly discharged from all process, even though partly penal in its nature, if it was really process for the recovery of a debt or money demand; thus, it would apparently have discharged from an order by a county court imprisoning the defendant under the 98th section of the 9 & 10 Vict. c. 95 (*y*); and now, by section 165 of the Act of 1861, the order of discharge discharges the bankrupt from the effects of any process issuing out of any court for contempt of any court for non-payment of money or of costs or expenses in any court, and from all costs which he would be liable to pay in consequence of or on purging his contempt; and a bankrupt in custody under any such process as aforesaid, on obtaining an order of discharge, is entitled to be discharged from such custody forthwith. So the order of discharge has been held to discharge the bankrupt from proceedings to enforce a decree for alimony (*z*), and from an attachment for costs in the Divorce Court (*a*).

CHAP. XVIII.

Re Newbery,
remarks on.Certificate formerly discharged from all process for money demands, *semble*.

Effect of discharge under sect. 165 of the Act of 1861.

Bankrupt discharged from costs, &c., in Divorce Court.

In an action of debt or assumpsit, where verdict has not been obtained till after the bankruptcy, the costs, as has been before observed, are not in general proveable, although the debt is, and yet the costs as well as the debt were, it seems, barred by the certificate and are now by the order of discharge (*b*).

In general, though, as has been seen, not in all cases, the question whether a demand is proveable and whether it is barred, are

(*u*) *In re Newbery*, 4 Adol. & E. 100.(*x*) Compare *R. v. Edwards*, 9 B. & C. 652; *Ex parte Culliford*, 8 B. & C. 220; *Reg. v. Hills*, 2 El. & B. 176; 22 L. J., Q. B. 322; 17 Jur. 714; see also ante, Proof of Debt.(*y*) *Rackham v. Blowers*, 15 Jur. 758.(*z*) *Dickens v. Dickens*, 31 L. J., Mat. 183; 7 L. T., N. S. 395; 2 S. & T. 645.(*a*) *Re Green*, 6 L. T., N. S. 109.(*b*) *Ex parte Poucher*, 1 G. & J. 385; *Woodward v. Meredith*, 8 Jur. 1136.

CHAP. XVIII. convertible; if proveable, it is barred, if barred, it was proveable.

Discharge no
bar to action
for debt not
due at date of
bankruptcy.

*Temple v.
Pullen.*

The only exceptions to this rule have, it is conceived, been already mentioned. Even where a judgment has been recovered after the bankruptcy in an action for a debt proveable under the bankruptcy, the judgment and all proceedings under it are barred as fully as the original debt (*d*); but the certificate or order of discharge is no bar to actions for debts not due at the date of the bankruptcy, unless they are such as are proveable under the various sections enlarging the right of proof.

In July, 1846, a trader having been arrested on a *ca. sa.*, in order to obtain his discharge, gave to the attorney of the execution creditor 5*l.* and a blank promissory note stamp, signed by him. He afterwards became bankrupt, and in May, 1851, obtained his certificate. In October, 1852, the attorney filled up the blank as a promissory note for 24*l.* 18*s.* 6*d.*, and afterwards indorsed it to the plaintiff. On an action upon the note, it was held, that as the cause of action arose after the bankruptcy, it was a debt not proveable under the fiat, and that the certificate was no bar (*e*).

Remarks on.

In this case the question does not seem to have been mooted how far the authority to fill up the note to any amount covered by the stamp, usually implied from the delivery of a blank note already signed, was valid after the bankruptcy of the maker of the note, and whether such authority was not revoked by the bankruptcy. On this head there is much to be said. It seems clear that if such a note were given in consideration of a debt due, payment of the debt before the note was filled up, would be a revocation of the authority; and it seems on principle, for the same reason, that if the consideration for the note was a demand proveable under the bankruptcy, the bankruptcy would be a revocation of the authority for the consideration, inasmuch as the note being cancelled and discharged by the bankruptcy certificate, the authority to complete the note must be held to have been withdrawn: if, on the other hand, the consideration was a demand not proveable under the bankruptcy, then probably such a note would be valid, for the bankruptcy itself could not be then a revocation of the authority to fill up the note, the consideration for which such authority was given still remaining a good and valid consideration, and the authority being coupled with an interest, and therefore not revocable at the mere option of the maker of the

(*d*) *Van Sandau v. Corsbie*, 3 B. & Al. 13; see *Naylor v. Mortimore*, 13 W. R. L. J., Exch. 151.
47. (*e*) *Temple v. Pullen*, 8 Exch. 389; 22

note so long as the interest existed. It seems, however, now to be decided that the bankruptcy does not revoke the authority, even where the debt was proveable (*f*). (*See ante, Proof of Debt.*) The fact that the authority is revoked before the instrument becomes a note, if such be the fact, will render the instrument invalid *ab initio*, and it will not, it may be presumed, be good even in the hands of a *bonâ fide* holder for value—as in the case of a note forged or materially altered, in which case no action lies for a *bonâ fide* holder against the maker or acceptor of the note (*g*).

If a defendant in a bailable action becomes a bankrupt, and obtains his certificate or discharge before his bail are fixed, the bail will thereupon be discharged (*h*). And where the bankrupt is required to appear before the commissioner in a distant county, the court in which the action is brought will enlarge the time for the bankrupt to surrender in discharge of his bail, until a reasonable time after he has passed his last examination (*i*); but not in the case of a town fiat, as the bankrupt, if rendered, may be brought up for examination (*k*); and the time for rendering the bankrupt will be enlarged, notwithstanding the provisions of 11 Geo. 4 & 1 Will. 4, c. 70, s. 21, authorizing the render of defendants in discharge of bail to the county prison (*l*). And the obtaining a certificate has been held to have the same operation as a render; therefore, where after judgment against the principal he became bankrupt, and obtained his certificate within fourteen days of service of process upon the bail, they were entitled, under the General Rule of 17th June, 1833, to have proceedings against them stayed, though no notice was given to the plaintiff in the action, nor any application made to stay such proceedings until after the fourteen days had expired (*m*). And where the bail as well as the principal became bankrupt, the court ordered them to be relieved, on motion, without pleading, though the bail bond had been ordered to stand as a security; but the bail were required to swear that they had obtained their certificate (*n*); but if the bail be fixed before the allowance of the certificate, they remain liable, and the court cannot relieve them (*o*). And where the certificate was obtained

Discharge of bankrupt defendant before bail fixed, discharges bail.

Obtaining certificate held to have effect of "render."

Bail becoming bankrupt, discharged on motion.

(*f*) *Ex parte Bartlett*, 3 De G. & J. 378.

(*g*) *Burchfield v. Moore*, 3 E. & B. 683; 23 L. J., Q. B. 261.

(*h*) *Johnson v. Lindsay*, 2 D. & R. 385; 1 B. & C. 247; *Woolley v. Cobbe*, 1 Burr. 244.

(*i*) *Maude v. Jowett*, 3 East, 145; *Glen-*

dining v. Robinson, 1 Taunt. 320; *Stead v. Tate*, 3 Moo. & P. 272.

(*k*) *Coombs v. Dod*, 3 M. & Scott, 817.

(*l*) *Harris v. Alcock*, 1 Dow. 568.

(*m*) *Jones v. Ellis*, 1 Adol. & E. 383.

(*n*) *Streeter v. Scott*, 2 Dow. 362.

(*o*) *Stapleton v. Macbar*, 7 Taunt. 589.

CHAP. XVIII. after issue and before judgment, the court refused, on motion of the bail, to enter an exoneretur on the bail-piece, because the bail was not damnified, he being in a condition to render: the application should be by the bankrupt (*p*).

Discharge
under joint fiat
bars separate,
under separate
fiat, joint debts.

An order of discharge under a joint adjudication bars separate debts as well as joint (*q*), and *vice versâ* under a separate adjudication bars joint as well as separate debts (*r*). As the order takes effect immediately on its grant by the commissioner, the bankrupt, if in prison for debt at the date of the order granting him his discharge, is entitled to an immediate release (*s*).

Crown not
bound by bank-
rupt laws.

The crown, not being bound by the bankrupt laws, the certificate or order of discharge does not prevent an extent against the bankrupt's after-acquired property (*t*).

Bankrupt
assignee's
effects not pro-
tected by cer-
tificate, if
guilty of re-
tainer or mis-
application.

By 12 & 13 Vict. c. 106, s. 156, if any assignee indebted to the estate of which he is such assignee in respect of money, being part of the estate of the bankrupt, retained or employed by him, become bankrupt, and obtains his certificate, it shall have the effect only of freeing his person from arrest and imprisonment, but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children, excepted) shall remain liable for so much of his debt to the estate, of which he was assignee, as shall not be paid by dividends under his bankruptcy, and for interest at the rate of five per cent. per annum on the whole debt.

This is nearly the same as 6 Geo. 4, c. 16, s. 105.

A., being indebted to B., absconded to America, upon which B. sent out a power of attorney to an agent to attach the property of A., but hearing that another creditor had adopted a similar proceeding, B. sued out a fiat against A., and was appointed one of his assignees. Afterwards B.'s agent obtained a sum of money from A. in America, and remitted it to B. in England. It was held, that as the agent received the money after the act of bankruptcy, it belonged to the estate, and therefore that B. must have received it in his character of assignee, and, as he had himself subsequently become bankrupt, he was held liable to be charged with the amount and interest at 5*l.* per cent. under 6 Geo. 4, c. 16, s. 105, notwithstanding that he had obtained his certificate (*u*).

Release of
bankrupt

By section 162 of the Act of 1861, if a bankrupt, after the order

(*p*) *Humphreys v. Knight*, 6 Bing. 569.
(*q*) *Howard v. Poole*, 2 Str. 995; *Wickes v. Strahan*, 1b. 1157.
(*r*) *Ex parte Yale*, 3 P. Wms. 24, n.; 1 Selw. N. P., 12th ed., 295.

(*s*) *Re Paul*, 8 L. T., N. S. 801.
(*t*) *Anon.*, 1 Atk. 262; *Crawford v. Att.-Gen.*, 7 Price, 5.
(*u*) *Ex parte Ralph*, 3 M., D. & D. 331.

of discharge takes effect, be arrested or detained in custody for a debt, claim or demand, proveable under his bankruptcy, where judgment has been obtained before the order of discharge takes effect, the court, or a judge of a superior court of law, shall, on proof of the order of discharge, and unless there appear good reason to the contrary, direct the officer who has the bankrupt in custody to discharge him, which shall be done accordingly without fee.

This is substantially the same enactment as section 205 of the Act of 1849.

Under that enactment a bankrupt was entitled to his release, though the judgment, on which he was taken, was against a joint stock company by its public officer, enforced by *sci. fa.* against the bankrupt (*x*): but it has been before (*ante*, p. 968) observed, that it does not extend to process at the suit of the crown, such as an extent; for the crown is not bound by the statute of bankrupts (*y*). Nor does it extend to any seizure of the property of the bankrupt, but is confined to an imprisonment of his person merely (*z*). And even in cases apparently within the act, it is a good answer to a plea of bankruptcy that the certificate was obtained by fraud (*a*). And if it appear that the certificate was obtained by fraud (*b*), or that there are other grounds for disputing its validity (*c*), the court will not interfere in a summary way, but will leave the defendant to plead his bankruptcy and certificate.

That certificate
obtained by
fraud, formerly
a good answer
to plea of
bankruptcy.

Even where there appeared no objection to the order of discharge, the court has refused to interfere, and left the bankrupt to seek his release from the court under whose process he was arrested (*d*).

Court will not
always inter-
fere in support
of order of dis-
charge.

Under the still earlier enactment to the same effect, viz., 5 & 6 Vict. c. 122, s. 42, it was held, that the application for the discharge of a bankrupt in custody under a judgment, but who had obtained his certificate, must be made to a single judge, the court sitting in banc having no original jurisdiction for the discharge of a bankrupt; but that if the judge, on hearing, refused to discharge the bankrupt, the court, sitting in banc, might be moved to rescind his order; and, on the application to a judge for the discharge of a bankrupt from custody, he might receive and decide upon affidavit the objection that the certificate was void for gaming, and that if

(*x*) *Thomson v. Harding*, 3 C. B., N. S. 254; 27 L. J., C. P. 38.

(*y*) *Anon.*, 1 Atk. 262.

(*z*) *Callen v. Meyrick*, 1 T. R. 361; *Hanson v. Blakey*, 1 Moo. & P. 261; 4 Bing. 493.

(*a*) *Horn v. Ion*, 4 B. & Adol. 78.

(*b*) *Vincent v. Brady*, 2 H. Bl. 1; *Sowley v. Jones*, 2 W. Bl. 725; *Martin v. O'Hara*, Cowp. 823.

(*c*) *Stacey v. Federici*, 2 B. & P. 390.

(*d*) *Re Preston*, 5 L. T., N. S. 89.

CHAP. XVIII. the judge considered the gaming proved, he should have refused the application; and upon such application he might receive evidence of several and distinct acts of gaming (e). (*See Chapter on the Bankrupt.*)

These enactments have reference to cases only where the bankrupt has obtained his certificate under an English fiat: if the bankrupt, who has obtained his certificate in a foreign country, be arrested here upon mesne process, the court will not discharge him upon common bail, but will leave him to whatever remedy he may have by pleading (f).

Effects of order in case of partners or those jointly bound.

By section 163 of the Act of 1861, the order of discharge shall not release or discharge any person who was a partner with the bankrupt at the time of the bankruptcy, or was then jointly bound, or had made any joint contract with him.

This is the same as an enactment in the earlier acts (*see* Act of 1849, the latter part of section 200): and, therefore, if a creditor petitioned for adjudication against one of two partners on a joint debt, and received a dividend out of the joint estate, this would not prevent him from bringing an action against the partner for the residue (g), even although the bankrupt partner had obtained his certificate. Nor did signing the certificate of the surviving partner release the estate of a deceased partner (h).

Contract, &c., pending proceedings in bankruptcy, not binding on bankrupt.

By section 164 of the Act of 1861, which is analogous to section 204 of the Act of 1849, although the wording is somewhat different, after the order of discharge takes effect, the bankrupt shall not be liable to pay or satisfy any debt, claim or demand, proveable under the bankruptcy, or any part thereof, on any contract, promise or agreement, verbal or written, made after adjudication; and if he be sued on any such contract, promise or agreement, he may plead in general that the cause of action accrued pending proceedings in bankruptcy, and may give this act and the special matter in evidence. This enactment has already been the subject of comment in the Chapter on the Bankrupt, his Rights and Duties.

Contract, &c., to buy off opposition of creditors, void.

By section 166, contracts or securities entered into or given by a bankrupt to induce a creditor to forbear opposing his order of discharge, or to forbear petitioning for its recall, or appealing

(e) *Wearing v. Smith*, 10 Jur. 924; 11 Jur. 469; 9 Q. B. 1024; *Clark v. Smith*, 3 C. B. 982.

(f) *Philpotts v. Reed*, 1 Br. & Bing. 13.

(g) *Ex parte Bolton*, Buck, 12; per cur., *Heath v. Hall*, 4 Taunt. 326.

(h) *Sleech's case*, 1 Meriv. 570.

against it, are made void. The section is fully discussed in the CHAP. XVIII. Chapter relating to the Creditors.

By section 167, penalties are provided for creditors accepting bribes for forbearing to oppose the bankrupt's order of discharge. This section is also treated in the Chapter on Creditors.

Penalty for receiving consideration to forbear opposition.

By section 168 of the Act of 1861, the order of discharge, whether suspended or not, shall not be reviewed by the court, unless the court see good cause to believe that the order was obtained on false evidence, or by reason of the suppression of evidence, or otherwise fraudulently; in any of which cases the court may, if it think fit, upon the application of the bankrupt or of a creditor who has proved, and subject to such deposit for costs, and to such notices, by advertisement or otherwise, as the court shall think fit, grant a rehearing of the matter, and rehear it accordingly; and upon rehearing the court shall make such order as shall seem just, in like manner as it might have done upon an original hearing.

Rehearing of order of discharge.

Under this section where a debt was omitted from the account filed by the bankrupt, by which omission a creditor was misled and incapacitated from opposing the order of discharge, the court, upon affidavit of the circumstances, allowed the creditor to prove his debt, and ordered a rehearing of the allowance of the order of discharge (*i*). A suspicion of fraud is no ground for a rehearing under this section, unless supported by such evidence as gives the court good ground to believe, as a matter of fact, that the order was actually obtained by fraud (*k*).

Re Angerstein.

This clause is analogous to the early part of sect. 207 of the Act of 1849, and like it restricts the rehearing of the application for an order of discharge to the cases specified in the section.

By section 169 of the Act of 1861, if on such rehearing the court shall annul or suspend the order of discharge, all persons having *bonâ fide* become creditors of the bankrupt between the time of the order's originally taking effect and the time of its being annulled or suspended on rehearing, shall, as against any property acquired by the bankrupt during the same period, and in priority to the original creditors, be admitted to prove and have dividends under the bankruptcy.

If order suspended, subsequent property to be liable first to subsequent creditors.

This is declaratory of what would probably be held to be law independently of it. For it seems to be well established that if an

Subsequent property of uncertificated

(*i*) *Re Van Noppen*, 11 W. R. 193; 7 L. T., N. S. 568; see *Ex parte Johnstone*, 31 L. J., Bcy. 63, cited post on section 171.

(*k*) *Re Angerstein*, 9 Jur., N. S. 763; 8 L. T., N. S. 223.

CHAP. XVIII. bankrupt, liable first to subsequent creditors without notice of bankruptcy. uncertificated bankrupt is permitted by his assignees and creditors to contract debts without giving notice of the bankruptcy, subsequent creditors will, as against property acquired after the bankruptcy, be preferred to the creditors of the bankruptcy (*k*), and it is clear that the subsequent creditors, in the case supposed by the section, cannot have notice that the bankrupt is uncertificated. The clause in question may be most useful in preventing doubts arising.

Order, when to be drawn up. By sect. 170, the order of discharge shall not be drawn up until after the expiration of the time allowed for appeal, or, if an appeal be brought, until after the decision of the Court of Appeal upon such appeal, and shall bear date either the day after the expiration of the time allowed for appeal, or the day of the decision of the Court of Appeal, as the case may require.

Date of order of discharge. It has been already remarked that the order of discharge takes effect from the date of its being pronounced by the court, not from the time it is drawn up (*l*).

Rule as to deposits on appeal against certificate, &c. By General Order of 19th October, 1852, rule 62, before any application for a recall of a certificate, and before or at the time of entering any appeal against the judgment of the Court of Bankruptcy for the allowance of a certificate, or for the refusal, the withholding of, or in respect of the class of a certificate, or otherwise with respect to a certificate, the creditor or assignee or bankrupt intending to appeal, shall deposit with the chief registrar such sum, not being less than 10*l.* and not exceeding 40*l.*, as the commissioner whose judgment is appealed from, or some other commissioner of the same court acting for him, shall direct, in order to satisfy (so far as the same may extend) any costs that the appellant may be ordered to pay, and in the absence of any direction of a commissioner as to the amount of deposit, the sum of 20*l.* shall be so deposited.

By rule 63, at the time of entering an appeal against the judgment of the court for the allowance of a certificate, or for the refusal, the withholding, or the class of a certificate, notice thereof shall be given to the court by leaving the same in writing with the chief registrar, who shall forthwith enter in the certificate book

(*k*) *Troughton v. Gitley*, Amb. 629; *Tucker v. Hernaman*, 4 De G., M. & G. 395; 22 L. J., Ch. 791; 17 Jur. 723; see *Re Atkinson*, 2 De G., M. & G. 140; 16 Jur. 1003; *Re Cazneau's legacy*, 2 Jur., N. S. 157; *Re Barr*, 4 K. & J. 219; 27 L. J., Ch. 548; 4 Jur., N. S. 1013; *Re*

Birch's legacy, *Bissell's trust*, 2 K. & J. 328; 25 L. J., Ch. 323; 2 Jur., N. S. 370; *Re Coombe's trust*, 5 Jur., N. S. 784; *Ex parte Graham*, 31 L. T. 74.

(*l*) *Re Laforest*, 32 L. J., Bcy. 50; 9 Jur., N. S. 856; 11 W. R. 738.

the time and nature of every such appeal, and shall afterwards enter in the said book the date and substance of any order made in the said appeal that may be produced before him; and by rule 64, all affidavits to be made in support of petitions of appeal against the allowance, refusal, or withholding of any bankrupt's certificate, or the class thereof, shall be filed at the time of the filing of such petition of appeal.

It may be doubtful whether the creditors who have opposed the allowance of the certificate or discharge before the commissioner are to be served with the petition of appeal from his decision, if there are many; but if but two, they should be served (*m*). (*See ante, Interlocutory Applications.*)

By sect. 171 of the Act of 1861, at any time within thirty days after any order of discharge shall have been allowed or refused, and subject to such order as to deposit of costs as general orders shall direct, any creditor of the bankrupt, or any creditors' assignee, or the bankrupt, may, if the order of discharge has been made or refused by any commissioner or county court judge, apply to the Court of Appeal in Chancery that such order of discharge may be granted, or recalled and delivered up to be cancelled; and such court may, on good cause shown, order such order of discharge to be granted, or to be recalled and cancelled.

Any creditor, within the meaning of this section, means any creditor who was entitled to oppose the discharge before the commissioner, and therefore no creditor is entitled to be heard by the Court of Appeal against the order of discharge who had not proved at the date of the hearing below. But a creditor, if he has proved, may be heard against the order in the Court of Appeal, though he has not opposed it in the court below (*n*).

Appeal against grant or refusal of discharge.

No creditor to appeal against discharge, who had not proved before hearing below.

But he need not have opposed.

These two apparently conflicting propositions admit of being reconciled, for the creditors, who have proved, are supposed through the assignees to be parties to the proceedings on the application for the order of discharge, and thus to have opposed in the court below, while those who had not proved cannot be supposed to have been parties to the order in any capacity.

A creditor intending to oppose being misinformed as to what commissioner the matter was to be heard before, and being in consequence absent when the order was allowed, it was held, on appeal, that the allowance of the order ought to be remitted back for rehearing under this section, taken, it would seem, along with

(*m*) *Ex parte Johnson*, 4 De G. & S. 25.

(*n*) *Re Monk and Brooks, Ex parte Greenwood, Ex parte Burgess*, 12 W. R. 924.

CHAP. XVIII.

Court of Appeal on reversing refusal of discharge, should itself grant it.

Semble, bankrupt should be present in court, where question as to discharge pending.

Semble, creditors' assignees to be served, on application against discharge.

Form of order of discharge.

sect. 168 (*o*); but where an order of the commissioner refusing an order of discharge is reversed on appeal, the Court of Appeal should, it seems, itself grant the order, and not remit it to the commissioner to grant it (*p*). It was held under the former law, that where there was a question as to the certificate pending, the bankrupt ought to be present personally in court, and, it is presumed, that the same rule still remains in force (*q*); for this reason a petition of appeal against the order, allowing a bankrupt's certificate, must have been served personally on him (*r*), and his solicitor's admission that the bankrupt knew of the application and its nature was not sufficient (*s*); but it was held under the former law, that a creditor's petition against the allowance of a bankrupt's certificate need not necessarily have been served on the assignees, unless the petitioner sought something further, as for instance, to prove a debt, or unless he imputed fraud or misconduct to the assignees (*t*); but it would seem that in all cases the creditors' assignees are interested on the question of certificate or order of discharge, as until it is obtained all the estate which may come to the bankrupt would vest in them, but from the date of the order of discharge the bankrupt's capacity to take property revives, and it is therefore always safer to serve the creditors' assignee in such a case.

By sect. 172, the order of discharge shall be in such form as general orders shall direct, and shall be under the hand of the commissioner and the seal of the court; and notice of the granting thereof shall be advertised in the London Gazette and in two local papers.

The above sections 170, 171 and 172 correspond to section 206 of the Act of 1849.

Forms are given, General Order, 12th October, 1861, Schedules 17 and 18, and County Court Order, 1st July, 1863, Schedules 93, 96. See also County Court Orders, rule 47.

(*o*) *Ex parte Johnstone*, 31 L. J., Bcy. 63; 6 L. T., N. S. 234.

(*p*) *Ex parte Williams*, 9 L. T., N. S. 358.

(*q*) *Ex parte Turner*, 31 L. T. 111.

(*r*) *Ex parte Harford*, Buck. 38.

(*s*) *Ex parte Levy*, 4 D. & Ch. 224.

(*t*) *Ex parte May*, 3 Dea. 382; M. & Ch. 18.

CHAPTER XIX.

ADJUDICATION AGAINST TRADERS IN INDIA AND ELSEWHERE.

CHAP. XIX.

THOUGH not strictly within the limits of this work, it may be well to notice some provisions of the law on the matters appearing at the head of this Chapter.

By the statute 9 Geo. 4, c. 73, courts were established in the towns of Calcutta, Madras and Bombay, with certain powers for the relief of insolvent debtors in the East Indies.

Courts for relief of insolvents in the East Indies.

By stat. 11 & 12 Vict. c. 21, the statute of 9 Geo. 4, c. 73, was repealed, but by sect. 2 it was enacted, that the courts established under the latter statute should be continued, and should continue with all the same powers as theretofore, and each should continue to be styled "The Court for the Relief of Insolvent Debtors," and be holden before any one judge of the supreme courts of judicature at Calcutta, Madras and Bombay respectively, within the respective limits of the said towns of Calcutta, Madras and Bombay.

Continued by 11 & 12 Vict. c. 21.

By sect. 14, the chief justice of the supreme court in each of the presidencies in India is empowered to appoint a person to act as the official assignee of each court for the relief of insolvent debtors in each of the presidencies, and to be an assignee of the insolvent's estate and effects, together with any other assignee or assignees, or solely, according as there may or may not be any other assignee or assignees.

Judges of Supreme Court to appoint official assignee.

By 11 & 12 Vict. c. 21, s. 88, a court for the relief of insolvent debtors was directed to be holden within the settlement of Prince of Wales Island, Singapore and Malacca; and by sect. 90, it is enacted, that the several powers, provisions and clauses thereinbefore contained, subsequent to the clause or provision for regulating the fees to be taken in the courts for the relief of insolvent debtors in India, shall apply and take effect in and with reference to the said settlement of Prince of Wales Island, Singapore and Malacca in the same manner in all respects, as if the said powers, provisions and clauses respectively were in that act repeated and re-enacted with reference thereto; and that in applying this last-mentioned provision the said court of judicature at the said settlement shall

Act extended to the settlement of Prince of Wales Island, Singapore and Malacca.

CHAP. XIX.

stand and be read in the place of and for the supreme court of judicature at Calcutta, and the court for the relief of insolvent debtors at the said settlement in the place of and for the said court for the relief of insolvent debtors at Calcutta, and the said Settlement in the place of and for the Presidency of Fort William and town of Calcutta respectively.

Prisoners for
debt to petition
court for re-
lief.

By 11 & 12 Vict. c. 21, s. 5, any person who shall be in prison within the respective limits of the towns of Calcutta, Madras and Bombay, upon any process whatsoever, for or by reason of any debt, damages, costs or money which such person is solely or jointly with any other liable to pay, or for or by reason of any contempt of any court whatsoever for nonpayment of money only, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which such person would be liable in clearing such contempt, or in any manner in consequence of or by reason of such contempt, or who shall reside within the jurisdiction of any of the supreme courts at Calcutta, Madras and Bombay respectively, and, being indebted on account of any such liability as aforesaid, shall be in insolvent circumstances, may at any time apply by petition to the court for the relief of insolvent debtors within the presidency where such insolvent debtor shall then be, for the benefit of the provisions of that act, and such petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said court to which it shall be presented; and if any such person as aforesaid shall be jointly indebted, it shall be lawful for them to apply jointly by petition, in such manner as is thereinbefore mentioned, and under such joint petition the joint estate and the separate estates of such petitioners shall be dealt with and distributed. On the bankruptcy of a firm under this section all the property, separate as well as joint, of the partners passes (a).

Upon filing of
petition estate
to vest in offi-
cial assignee.

By 11 & 12 Vict. c. 21, s. 7, upon the filing of any such petition as is aforesaid, it shall be lawful for the said court, and the said court is thereby authorized and required to order that all the real and personal estate and effects of such petitioner, whether within the territories within the limits of the charter of the East India Company or without, except the wearing apparel, bedding and other such necessities of such petitioner and his family, and the working tools and implements of such petitioner and his family, not exceeding in the whole the value of three hundred Company's rupees for each petitioner with his family, and all debts due to him, and all the future estate, right, title, interest and trust of the

(a) *Brown v. Carbery*, 9 L. T., N. S. 768.

said petitioner in or to any real or personal estate or effects within or without the said territories which such petitioner may purchase, or which may revert, descend, be devised or bequeathed, or come to him, and all debts growing due to him before the court shall have made its order in the nature of a certificate, as hereinafter mentioned, do vest in the official assignee for the time being of the said court, and that all books, papers, deeds and writings in any way relating to such petitioner's estate and effects in his possession, or under his custody or control, shall be deposited with such assignee, and such order shall be entered of record in the said court, and such notice thereof shall be published as the said court shall direct; and such order, when so made, shall by virtue of this act relate back to and take effect from the filing of the said petition, and shall instantly, and without any conveyance or assignment, vest all the real and personal estate, effects and debts as aforesaid in the said official assignee, who shall have full powers for the recovery thereof and shall hold and stand possessed of the same for the purposes and in manner hereinafter mentioned: provided always, that in case, after the making of any such vesting order, the petition of any such petitioner shall be dismissed by the said court, such vesting order made in pursuance of such petition shall from and after such dismissal be null and void to all intents and purposes: provided also, that in case any such vesting order as aforesaid shall become null and void by the dismissal of such petition, all acts theretofore done by any assignee or other person acting under his authority according to the provisions of this act shall be good and valid, and no action or suit shall be commenced against any such assignee, nor against any person duly acting under his authority, except to recover any property of such petitioner detained after an order made by the said court for the delivery thereof, and demand made thereupon; and until the appointment of an official assignee as hereinafter is directed the common assignee of the court shall stand and be in the place of the official assignee, and this present clause shall apply and have effect accordingly.

If petition dismissed after vesting order made, the latter to be null and void;

but prior acts of assignee, &c. to be valid.

By sect. 8, if any person who shall be in prison within the respective limits of the towns of Calcutta, Madras and Bombay, charged in execution for any debt or damages, or any costs or sum or sums of money, or committed for or by reason of any contempt of any court whatsoever for nonpayment of money, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which such person would be liable in clearing such con-

Lying in prison twenty-one days for debt, an act of insolvency upon which creditor may petition.

CHAP. XIX.

Court, on petition of alleged insolvent, may revoke or confirm adjudication.

Lying in prison with intent to defeat, &c. an act of insolvency.

tempt, or in any manner in consequence or by reason of such contempt, shall not, within twenty-one days next after such prisoner shall have been so charged in execution or committed as aforesaid, make satisfaction to the creditor or creditors at whose suit such prisoner shall have been so charged in execution, or committed for such debt, damages, costs, sum or sums of money, or to the person or persons entitled to the money for nonpayment of which such prisoner shall have been in contempt, or to the payment of which such prisoner would be liable in consequence or by reason of such contempt, then and in any of the said cases it shall be lawful for any such creditor or creditors, or person or persons entitled to such money as aforesaid, to present a petition to the court for the relief of insolvent debtors of the presidency within which such person shall have been so imprisoned, which petition may be in the form No. 1 in the Schedule (D.) to that act annexed, with such additions or variations as may be necessary to adapt it to the particular case; whereupon, and upon such petition being duly verified, it shall be lawful for the court to adjudge that such prisoner has committed an act of insolvency: provided always, that it shall be lawful for the said court, upon the petition of any person adjudged to have committed an act of insolvency as aforesaid, and upon proof of notice to the creditor or creditors upon whose petition such adjudication shall have been made, to revoke or confirm such adjudication.

By sect. 9, if any person who, by an act passed in the sixth year of the reign of King George the Fourth, intituled "An Act to amend the Laws relating to Bankrupts," or an act passed in the session held in the fifth and sixth years of the reign of her present Majesty, intituled "An Act for the Amendment of the Law of Bankruptcy," or any other act now in force or thereafter to be passed, would be deemed a trader liable to become bankrupt, having been arrested or committed to prison for debt, or for or by reason of any contempt of any court whatsoever, for nonpayment of money only, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which such person would be liable in clearing such contempt, shall, upon such or any other arrest or commitment for debt or nonpayment of money or costs as aforesaid, lie in prison twenty-one days, or, having been arrested or committed to prison for any other cause, shall be in prison for twenty-one days after any detainer for debt, nonpayment of money or costs as aforesaid, lodged against him and not discharged, or if any such person shall depart from within the limits

of the jurisdiction of any of the said supreme courts with intent to defeat or delay his creditors, or with the like intent depart from his usual place of business or abode within the said jurisdiction, or make with like intent any fraudulent gift, grant, conveyance, delivery or transfer of any of his lands, tenements, money, goods or chattels, or fraudulently with like intent suffer his lands, money, goods or chattels to be taken in execution, attached or sequestered, it shall be lawful for any person being a creditor, or for two or more persons being partners in trade and creditors to the amount of five hundred Company's rupees, or for any two creditors to whom such person shall be indebted to the amount of seven hundred Company's rupees, or for any three or more creditors to whom such person shall be indebted to the amount of one thousand Company's rupees, to present a petition to the court for the relief of insolvent debtors of the presidency within which such person shall have been so imprisoned or have resided at the time of such departure, or of such fraudulent gift, grant, conveyance, delivery, transfer, or fraudulent execution, attachment or sequestration; whereupon, and upon such petition being duly verified, it shall be lawful for the court to adjudge that such person has committed an act of insolvency: provided always, that it shall be lawful for the said court, upon the petition of any person adjudged to have committed an act of insolvency as aforesaid, and upon proof of notice to the creditor or creditors upon whose petition such adjudication shall have been made, to revoke or confirm such adjudication.

Court may revoke or confirm adjudication.

By sect. 11, upon any such adjudication being made as thereinbefore is mentioned, the said court is thereby authorized and required to make the like vesting order as thereinbefore is authorized to be made in the case of a petition by an insolvent debtor, which said vesting order shall in like manner be entered of record and notified as is thereinbefore mentioned, and shall, when made, take effect by relation from the filing of the petition on which the adjudication shall have proceeded; and such order shall, when made, vest in like manner all the said estate and effects, right, title and interest, trust and debts of the insolvent in the official assignee, in like manner, and as fully, and with the like effect as is thereinbefore mentioned, and which said vesting order shall, in case of the adjudication being for any reason revoked, be thenceforth null and void to all intents and purposes, in like manner and with the like effect and under the same qualifications as thereinbefore is mentioned.

On adjudication upon creditor's petition, vesting order to have effect as if petition presented by insolvent.

CHAP. XIX.

By Act of 1849, filing a petition under 11 & 12 Vict. c. 21, by a trader, and adjudication, an act of bankruptcy.

Sect. 75 of the Bankrupt Law Consolidation Act, 1849, referring to the above act, 11 & 12 Vict. c. 21, provided that the filing of a petition under it by a trader and the adjudication of an act of insolvency under it, should, for the purposes of the Act of 1849, be conclusive evidence of an act of bankruptcy committed by such trader at the date of the filing of the petition, and gave power to any creditor of such trader whose debt was of sufficient amount, to petition under the Act of 1849 for adjudication against him within two months after notice of the insolvency should have been given in the Gazette, and directed that on such adjudication of bankruptcy proceedings should go on under the Act of 1849, except so far as by the act of 11 & 12 Vict. c. 21, was excepted or provided.

Sect. 75 of the Act of 1849 repealed by Act of 1861.

This section has been repealed by the Act of 1861, and the 75th section of that act is apparently intended to be substituted for it, but it has unfortunately followed the language of the repealed clause, without, however, containing any reference to the act 11 & 12 Vict. c. 21, so as to make that language intelligible. It is, moreover, framed in terms of much wider application, although at the same time so vague and so generally inapplicable that it is extremely doubtful whether in fact the new enactment can practically apply to any cases except those falling precisely within the former, the language of which was fairly directed to the purpose directly in view of its framers.

Sect. 75 of the Act of 1861.

The 75th section of the Act of 1861 is as follows:—"The filing of a petition by or against a debtor, whether a trader or not, in any court having jurisdiction for the relief of insolvent debtors in insolvency or bankruptcy in any of her Majesty's dominions, colonies or dependencies, and the adjudication of an act of insolvency or bankruptcy on such petition, shall for the purposes of this act be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such debtor at the time of filing such petition, or of the filing of the petition on which the adjudication of an act of insolvency or of bankruptcy shall have been made; and any creditor or creditors of such debtor whose debt or debts shall be of sufficient amount to enable him or them to petition for adjudication of bankruptcy under this act may, at any time within two months after notice of such adjudication shall have been given in the London Gazette, petition for adjudication of bankruptcy under this act against such debtor, and under such petition all such proceedings may be had and taken as are authorized and directed by this act."

The difficulties of this section have already been noticed and commented on. (*See ante*, p. 148.)

The exceptions, which were by the Act of 1849 directed to be observed in the proceedings taken under the repealed section just mentioned, are not, as has been seen, reserved in express terms by the new section. The sections, however, in the act 11 & 12 Vict. c. 21, which contain those exceptions, are not expressly repealed, and there seems nothing actually inconsistent with the provisions of the Act of 1861 in those sections, and it may therefore be presumed that they are still in force.

By 11 & 12 Vict. c. 21, s. 78, when any creditor or creditors resident within the limits of the charter of the East India Company shall be desirous of suing out such fiat (as mentioned in sect. 77) in bankruptcy against any such insolvent trader, it shall be lawful for such person or persons to make proof of his or their debt or debts before any of the said courts for the relief of insolvent debtors, which proof shall be certified under the seal of such court; and the production of the certificate thereof, so sealed as aforesaid, shall, without any proof of the genuineness of such certificate or of such seal, be sufficient evidence of a petitioning creditor's debt to warrant the issuing of a fiat, and also to authorize all further proceedings thereon.

Creditor may sue out fiat in bankruptcy upon act of bankruptcy committed by insolvent.

This seems confirmed by sect. 206 of the Act of 1861. (*See post*, *Evidence*.)

Sect. 239 of the Act of 1849, which provided that copies of proceedings, under the act 11 & 12 Vict. c. 21, should be received as sufficient evidence of the same, has been repealed, and the wider enactment, sect. 206 of the Act of 1861, substituted. (*See post*, *Evidence*.)

Copies of proceedings to be received as evidence.

By 11 & 12 Vict. c. 21, s. 82, the principal officer of the respective courts for the relief of insolvent debtors shall cause notices to be inserted in the Gazettes of the respective presidencies, within which such courts shall be holden, of every petition which shall be filed in any of the said courts by any insolvent for relief under that act, and of every adjudication of an act of insolvency, and of every confirmation or revocation thereof, together with the dates of the same respectively, and, in the case of an adjudication, the date of the petition on which the same is grounded, forthwith after the filing of such petition or the pronouncing of such adjudication or such confirmation or revocation respectively; and that the chief secretary of the government of the said presidencies respectively shall, without delay, transmit to the court of directors of the

Notices of insolvency to be published in Gazette of Presidency, and in London Gazette.

CHAP. XIX.

said East India Company two or more copies at least of every such Gazette which shall contain any such notice as aforesaid, who shall, without delay, after the receipt thereof, cause such notice to be inserted in the London Gazette; and the production of the London Gazette containing any such notice as aforesaid shall be deemed and taken by all commissioners of bankruptcy and all courts whatsoever to be sufficient evidence of the filing of the petition of such insolvent in such court as aforesaid, and of such adjudication of insolvency, and of such confirmation or revocation thereof, and of the dates of the same proceedings respectively, and in the case of an adjudication, of the date of the petition on which the same is grounded.

Creditors
proving under
insolvency to
be admitted
without proof
under bank-
ruptcy.

Proof of Debts.]—This, as to creditors in England, will be the same as in ordinary cases; and by 11 & 12 Vict. c. 21, s. 80, all the creditors of any such insolvent, whose debts shall have been admitted or allowed by any court for the relief of insolvent debtors in India shall, without further proof, be entitled to be admitted as creditors under any such fiat in bankruptcy as aforesaid, for the purpose of receiving an equal dividend upon the estate of such bankrupt with the creditors who shall have proved their debts under such fiat; and in like manner all creditors under such fiat whose debts shall have been duly established shall be entitled to be admitted as creditors, without further proof, in such court for the relief of insolvent debtors, for the purpose of receiving an equal dividend upon the estate of such insolvent with the creditors whose debts shall have been allowed in such court.

Choice of
assignees to be
as in England.

Issuing of fiat
under 11 & 12
Vict. c. 21, not
to affect prior
proceedings in
insolvency.

Assignees and Property passing by their Appointment.]—The appointment and choice of assignees under the petition for adjudication of bankruptcy, will be the same as in the case of a trader in England, adjudicated bankrupt; and by 11 & 12 Vict. c. 21, s. 79, in the case of the issuing of any fiat in bankruptcy against any such insolvent trader, such fiat shall not in any manner affect, invalidate or make void any acts or proceedings had or done before the issuing of such fiat, of, by, or under the authority of any court for the relief of insolvent debtors in India, either by any assignee or assignees, or any other person or persons acting either mediately or immediately under the authority of any such court, and whether without or within the limits of the charter of the said East India Company; nor shall such fiat in any manner affect, invalidate or make void any such acts or proceedings as aforesaid

had or done after the issuing of such fiat, respecting any property or interest whatsoever of such insolvent, real or personal, or other matter, thing or person whatsoever within the said limits; nor shall the assignee or assignees under any such fiat in bankruptcy acquire any right or title to take possession of, demand, sue for, or recover any property or interest whatsoever, real or personal, of such insolvent, within the limits aforesaid; but the assignee or assignees under such insolvency shall, notwithstanding such fiat in bankruptcy, have full power and control over all the real and personal property of such insolvent within the limits aforesaid, as well as over that without the limits aforesaid, of which they may have taken actual possession before the issuing of such fiat, and shall have the distribution and management of all such property, as fully and effectually as if such fiat in bankruptcy had not issued.

By sect. 83, in case any fiat in bankruptcy, whether under the provisions of that act or otherwise, shall be issued against such insolvent trader as aforesaid, upon which such insolvent shall be declared a bankrupt before the grant of such order for discharge in the nature of a certificate as thereinbefore mentioned, then and in such case such order shall not operate as a discharge from the debt, claim and demand of any creditor who shall not have been resident within the limits aforesaid at any time between the filing of the insolvent's petition or the adjudication, as the case may be, and the making of such order: provided always, that when such insolvent shall be indebted or liable to two or more persons jointly, if any one of such joint creditors shall have been resident within the limits aforesaid within the time aforesaid, such certificate shall operate against all such joint creditors as aforesaid, notwithstanding the non-residency within the limits aforesaid, of some of the said joint creditors.

Discharge of insolvent not to affect creditors beyond limits of East India Company's charter.

Surrender of Bankrupt.]—By 11 & 12 Vict. c. 21, s. 81, when any such insolvent shall be declared bankrupt upon the sole ground thereinbefore mentioned, he shall not be required to surrender or be liable to any penalty for not surrendering himself to be examined under his commission, until forty-two days after he shall have come into some part of the said United Kingdom of Great Britain and Ireland.

Insolvent made bankrupt not liable to penalty for non-surrender, except after forty-two days from arrival.

Certificate.]—By 11 & 12 Vict. c. 21, s. 84, in case any fiat in bankruptcy shall be issued against such insolvent trader as afore-

Power of Court of Bankruptcy to grant cer-

CHAP. XIX.

ificates to
insolvents.

said, upon which he shall be declared a bankrupt before such order for discharge in the nature of a certificate as thereinbefore mentioned, if it shall afterwards be made to appear to any commissioner, judge or court in bankruptcy having authority to grant a bankrupt's certificate, that such order has been made by the court in the East Indies as aforesaid, such commissioner, judge or court as aforesaid may, if he think fit, thereupon grant the certificate of such bankrupt, which shall have the same force and effect, both without and within the limits aforesaid, as any certificate duly granted under any statute or statutes then in force or thereafter to be in force respecting bankrupts.

Unless court
satisfied that
all insolvent's
estate is within
limits of
charter, and all
debtors and
creditors are
there resident,
one-third of
assets to be
reserved for
twelve months;

and then to be
divided.

Dividend.]—By 11 & 12 Vict. c. 21, s. 43, unless it shall appear to the satisfaction of such court that all the property of the insolvent is situate, and all the debtors and creditors resident, within the limits of the charter of the East India Company, then, until the expiration of twelve calendar months from a notice, to be published in the London Gazette, of the petition or adjudication of or against any insolvent as thereafter is mentioned, the assignee or assignees shall reserve the full amount of one-third part of all the property of the said insolvent which shall have been got in, and shall make a dividend amongst the creditors of the said insolvent to the amount of the remaining two-third parts only, which third part so to be reserved as aforesaid shall in the meantime be invested or disposed of in such way as such court shall order, and shall not remain in the hands of such assignee or assignees; and at the expiration of the said term of twelve calendar months it shall be lawful for the assignee or assignees of such insolvent to apply to such court for a return of the said third part so reserved as aforesaid, in order that the same may be so distributed amongst the creditors as to place them all upon an equal footing; and upon such third part so reserved as aforesaid being restored to such assignee or assignees, such assignee or assignees shall forthwith proceed to take an account of the debts of the said insolvent admitted and established in the said court, and of the sum or sums which shall or may have been paid by way of dividend to any of such creditors, and shall distribute the fund then in the hands of such assignee or assignees, so as to place all the creditors of the said insolvent, whether Indian, or British or foreign, upon a just and equal footing, and so as that every creditor whose debt or claim shall be admitted or established in the said court shall receive a rateable and proportional part of the assets of the said insolvent,

according to the amount of his debt, without reference to the time at which such debt shall have been claimed; and, by sect. 44, if any creditor, whose claim shall have been admitted or established in any court for the relief of insolvent debtors, shall not appear by himself, his attorney or agent, at the making of any dividend, or shall not make application to receive his share thereof, the assignee or assignees shall certify the same to such court at its first sitting after the making of the dividend, and it shall be lawful for the court to direct in what manner, and by whom, and upon what conditions the money so due to such creditor shall be kept for or paid to him or to his lawfully-constituted attorney or agent.

CHAP. XIX.

Court to make order as to payment or deposit of unclaimed dividend.

Creditors.]—By 11 & 12 Vict. c. 21, s. 85, whenever it shall appear by the schedule of any such insolvent as aforesaid, that any of the creditors are resident out of the limits aforesaid, the principal officer of the said court for the relief of insolvent debtors shall, as soon as conveniently may be after the filing of such schedule, transmit two or more copies thereof to the chief secretary of the government of the presidency within which such court is situate, who shall transmit the same to the court of directors as soon as conveniently may be after the receipt thereof; and the said court of directors shall retain the same, and permit any person or persons, being a creditor or creditors of any such insolvent debtor, at all reasonable times to inspect and examine such schedule, and shall, upon the request and at the reasonable costs and charges of any such creditor or creditors, such costs or charges to be regulated by the said court of directors, provide for him or them a copy or copies of any such schedule.

Creditors residing out of limits may inspect proceedings transmitted from India to court of directors.

There are orders of her Majesty in council conferring on her consular courts in Turkey and China and Japan jurisdiction in bankruptcy and insolvency over her subjects resident in those countries, and the law to be administered by those courts is, as nearly as their constitution will allow, the law of England on the same subject-matter.

Consular courts in Turkey, &c. have jurisdiction over resident British subjects.

As to the dominions of her Majesty which have independent legislatures, they are governed by their own laws on the matter.

By sect. 218 of the Act of 1861, if any person who shall have been duly adjudged or declared bankrupt or insolvent in India, or any of the foreign dominions, plantations or colonies of her Majesty, shall be resident or shall be possessed of property in England, Ireland or Scotland, or in any colony, plantation or foreign possession of the crown, it shall be lawful for the assignee, trustee

Adjudication against debtor made bankrupt in India, &c., but residing or having property elsewhere.

CHAP. XIX.

Proceedings
thereon.

or other representative of the creditors of such bankrupt or insolvent to apply for and obtain an adjudication of bankruptcy, sequestration or insolvency against such person in the Court of Bankruptcy in England, and in the proper court in Scotland, Ireland and such colony, plantation or foreign possession of the crown respectively, and by virtue thereof the same order and disposition shall be had and taken with respect to the person and property of the bankrupt or insolvent, as if he had been originally adjudged bankrupt or insolvent by the court or tribunal so applied to. Upon such application it shall not be necessary for the assignee, trustee or other representative of the creditors of the person, so declared bankrupt or insolvent as aforesaid, to give proof of any act of bankruptcy or petitioning creditor's debt, or to produce any other evidence than a duly certified copy, under the seal of the court, of the order or adjudication by which such person has been found or adjudged bankrupt or insolvent.

It is not easy to assign a meaning to this section ; according to its literal interpretation, if a person who has been bankrupt at any period of his life, in India or Australia, or elsewhere in the foreign dominions or colonies of the crown, shall come to reside in England, Ireland or Scotland, or elsewhere in the dominions of the crown, or have any property there, even although he may have received his certificate (for there is no exception in the terms of the section), he may at once be made a bankrupt by the assignee or representative of the creditors, the only evidence necessary for making him so, being a certified copy of the former order or adjudication. This can hardly be the intention of the enactment, and it may possibly be held that the certificate would be a bar to such a proceeding as this, and that the section is only meant to apply to an uncertificated bankrupt or insolvent ; but if so, the section is, properly speaking, self-contradictory, as, strictly, an uncertificated bankrupt cannot have any property, at least not any personal property, all he has, whether at home or abroad, vesting in his assignees, by the bankruptcy.

CHAPTER XX.

ARRANGEMENTS WITH CREDITORS.

CHAP. XX.

Three modes of arrangement with creditors.

Arrangements after adjudication.

By sect. 110 of the Act of 1861, the majority in value of creditors may suspend proceedings in bankruptcy.

By the provisions of the Act of 1861, relating to arrangements with creditors, three general courses are pointed out for arrangements between a debtor and his creditors, and these again may be further divided on other principles of classification. All the three have points of close similarity in some respects, and two of them are hardly distinguishable; but between these last, nevertheless, some differences do exist, which will be noticed in their proper place. It seems well to treat of these various methods in the order in which the provisions affecting them occur in the above-mentioned Act of Parliament, and, following this order, the two first can only be adopted by proceeding to a bankruptcy as a preliminary step. With reference then to arrangements after adjudication, by the 110th section of the Act of 1861, it is provided, that in case at the first or any other meeting of creditors any proposal shall be made by or on behalf of the bankrupt which it shall appear to the major part in value of the creditors then present (or represented by proxy) (a), to be one that ought to be accepted, or if it shall appear to the majority in value of the creditors present at any meeting to be desirable on any ground to resolve, and such majority shall resolve, that no further proceedings be taken in bankruptcy, the meeting shall be adjourned for fourteen days in order that notice of such resolution may be given to every creditor by the official or creditors' assignee, which shall be done accordingly; and if at such adjourned meeting a majority in number representing three-fourths in value of the creditors present (or represented) shall so resolve, the proceedings in bankruptcy shall be suspended and the estate and effects of the bankrupt shall be wound up and administered in such manner as such majority shall direct, and the bankrupt, having made a full disclosure of his estate, shall be entitled to apply for an order of discharge.

This section, as will be seen, is of the most general and vague No defined

(a) See section 229 of the Act of 1861.

CHAP. XX.

scheme for winding up estate.

Resolution under sect. 110 abolishes jurisdiction of court except as to order of discharge.

Absolute power to deal with assets vests in majority.

Solicitor, if employed to prove a debt, may oppose resolution without written authority.

Resolution may be made after order of discharge.

Whether composition may be made under this section, *quære*.

Rules of distribution to be as in bankruptcy, *semble*.

Effect on jurisdiction of

character, as to the nature of the scheme which may be adopted for winding up the bankrupt's estate. It does not seem to require any deed or instrument, nor does it necessitate the sanction of the court, and no discretion is allowed to the latter to refuse to stay the bankruptcy (*a*), and it has even been decided lately that a resolution under this section, suspending proceedings in bankruptcy, puts an end to the jurisdiction of the court (*b*), except for obtaining discovery from the bankrupt and making an order for his discharge; in fact the section in question treats the assets of the bankrupt as belonging to the creditors, and gives a certain definite majority of those of them who happen to attend personally or by proxy at the meeting (of which they are to have notice), absolute power to deal with the assets in any way that such majority may see fit. It is, however, manifest that unless the arrangement be of the very simplest kind it can hardly be carried out by such machinery as is here provided, and it is believed that in point of fact, whenever it is desired to adopt a more complicated arrangement, recourse is usually had to one of the other courses provided by the act.

It has been held that a solicitor, who has been employed to prove a debt for a creditor, may without written authority appear for such creditor at the meeting, and oppose the resolution mentioned in this section (*c*). The resolution for winding up is valid, though not passed till after the bankrupt has obtained his order of discharge (*d*).

The *estate and effects* of the bankrupt are however to be *wound up and administered*; and it seems somewhat doubtful whether under this section a mere money composition could be made and the property restored to the bankrupt. It seems probable, that no course of distribution could be adopted, which would alter in substance the rights of creditors as they would exist under the bankruptcy if carried out, as for instance, the payment in full of any one class to the detriment of another class of creditors, where the rule in bankruptcy would be equality (*e*).

The words of this section (the 110th) have left it doubtful what was intended to be the effect of the suspension of the bankruptcy

(*a*) *Re Van Oppen*, coram Holroyd, Commissioner, Feb. 11, 1862.

(*b*) *Re Carter*, 14 W. R. 320; Law Rep. 1 Ch. Appeals, 170; and see *Ex parte Hastings*, 11 L. T., N. S. 160.

(*c*) *Re Thurgood*, 7 L. T., N. S. 104.

(*d*) *Ex parte Boldero*, 34 L. J., Bcy. 34; 13 W. R. 1088.

(*e*) See *Ex parte Spyer*, *Re Josephs*, 1 De G., J. & S. 318; 11 W. R. 1008; 2 N. R. 560.

CHAP. XX.

court of resolution under sect. 110.

upon the jurisdiction of the court, if difficulties should arise in carrying out the arrangement resolved on; and in the absence of judicial decision it might have been contended that the legislature intended to leave the jurisdiction of the court to subsist for the purpose of effectuating the resolutions, somewhat in the same manner as a court having sanctioned a compromise may enforce by its order the due performance thereof; and that the suspension of the proceedings in bankruptcy would have meant the suspension of the ordinary course of proceeding, and the substitution of the course pointed out by the resolutions; and indeed that the bankruptcy must subsist for some purpose is clear, since the bankrupt may apply for his order of discharge under it. It has, however, been held that, where proceedings have been stayed by resolutions under this section, the court has no jurisdiction to hear questions between assignees and creditors (*f*). The question in the case now referred to was in fact one of proof of a disputed debt, and it is doubtful whether, that being so, the judgment of the commissioner could be supported, at least on the grounds on which it was rested; as there must be some jurisdiction to determine whether a debt be or be not due, and to what amount, and it seems a strained construction of the act to render it imperative on a claimant to file a bill in Chancery after the bankruptcy of his debtor against the trustees appointed by the resolutions for compounding, or even to bring an action at law against the bankrupt (if this proceeding would be effectual), before he could require payment of his share or dividend of the bankrupt's assets under the composition or winding up. In the particular case the arrangement was embodied in a deed, and the deed had not been registered, which may have been a good ground for refusing to entertain any question upon it (*g*); but supposing no deed had been executed, the same difficulty might have arisen, and the other reasons given for the decision would have been as applicable as in the case of a deed, and the decision in the case of *Re Carter* above referred to (p. 988), following on *Re Walker*, and affirmed on appeal to the Lord Chancellor, has been such as to remove, as regards the practitioner, the ambiguity which, it is submitted, originally existed in the language of the section. Difficulties may, however, still occur where property of the bankrupt has been fraudulently assigned by a voluntary

*Re Walker.**Re Carter.*

(*f*) *Re Walker and Co., Ex parte Hastings*, 11 L. T., N. S. 160.

(*g*) See sect. 194 of the Act of 1861.

CHAP. XX.

Possible difficulties from suspension of proceedings in bankruptcy, by resolution under sect. 110.

Creditors may examine debtor as to accounts filed by him.

Commissioner bound to satisfy himself as to accounts.

Resolution under sect. 110 does not prevent outlawry of bankrupt; prevents motion to dismiss for misdescription.

Creditors may resolve under sect. 110 to wind up under deed, *semble*.

Bankrupt may apply for discharge.

Court bound by same rules as where no stay of proceedings.

Whether court, after resolution

conveyance, which would be liable to be set aside as an act of bankruptcy, or as a fraudulent preference, or as void under 13 Eliz. c. 5, in any of which cases, if the bankruptcy proceeded, the assignees would be directed to take proceedings to recover the property; and it seems very doubtful how far the court can be moved to direct such proceedings after the *stet processus* which this section involves, and yet matters of the nature in question are generally not discovered until after the time at which a resolution for stay of the bankruptcy is usually passed.

As the debtor is bound to make a full disclosure before he obtains his discharge, so the creditors have a right to examine him upon the accounts filed by him, although these may have before passed unquestioned, and the court is bound to grant leave for such examination (*h*); if the creditors do not apply, yet the commissioner is bound to satisfy himself judicially, before granting an order of discharge, that the bankrupt has made a full disclosure. It has been decided under this clause that, notwithstanding a resolution that no further proceedings shall be taken in the bankruptcy, the bankrupt, not having surrendered, may be proclaimed an outlaw (*i*). The stay of proceedings will, however, prevent a creditor from moving to dismiss the petition on the ground of misdescription (*h*).

There seems no reason why under this section the creditors should not resolve that the estate be wound up under a deed; and if so, it seems, the 136th section of the act would apply, and the court would have jurisdiction in the matter of the deed under that section. (*See post, p. 995 et seq.*)

The bankrupt, having made a full discovery of his estate, is entitled to apply for his order of discharge, but it does not appear that he is of necessity entitled to receive such order; and in investigating the matter the court will, it seems, be bound by the same rules as in cases where no resolution or stay of proceedings has been passed or has taken place (*l*). (*See sect. 159 of the Act.*)

The administration on which the creditors may resolve is accord-

(*h*) *Ex parte Jones, Re Wilson*, 12 W. R. 221; 9 L. T., N. S. 498. See *Re M'Kerrow*, 13 W. R. 847; 34 L. J., Bcy. 37.

(*i*) *Re Peter Morrison*, coram Holroyd, Commissioner, Feb. 18, 1862; 5 L. T., N. S. 854.

(*k*) *Ex parte Partridge, Re Mitchell*, 6 L. T., N. S. 339.

(*l*) Per Turner, L. J., *Re Delamere*, 31 L. J., Bcy. 67. See *Ex parte Jones, Re Wilson*, 12 W. R. 221; *Ex parte Castle*, 11 W. R. 311; 7 L. T., N. S. 398; *Re M'Kerrow*, 13 W. R. 847; affirmed on appeal, 34 L. J., Bcy. 37; 13 W. R. 1002; contra, *Re Brooks*, 5 L. T., N. S. 727, per Hill, Commissioner.

ing to the terms of the 110th section only that of the estate and effects of the *bankrupt*, and it is doubtful if, while the bankruptcy is suspended, the court can make an order for sale of goods in the reputed ownership of the bankrupt at the date of the adjudication, or for sale of property conveyed by the bankrupt to members of his family (see sect. 126 of the Act of 1849), or property extended upon a fraudulent debt to the crown. (*See Act of 1849, sect. 127.*)

CHAP. XX.

under sect. 110, can order sale of goods in order, &c. of bankrupt, *quære.*

The writer is not, however, aware that any decision has yet been given on any of these points, and it is certainly open to argument that the court, having acquired such jurisdiction by the adjudication, is not deprived of it by the resolution. In order to avoid doubts, it would perhaps be better that the assignees should, in case a resolution is proposed for staying proceedings, obtain the order for sale in such cases before the resolution is passed, and the title then relating to the act of bankruptcy would probably not be defeated by the stay of proceedings. No opinion, however, can be offered with any confidence until after the question on this point shall have been raised and judicially settled. (*See post, p. 996, as to these powers under the 185th and following sections.*)

Advisable to obtain order for sale before resolution passed.

By sect. 185 of the Act of 1861, at the first meeting of creditors held after adjudication in manner therein provided, or at any meeting to be called for the purpose, and of which ten days' notice shall be given in the London Gazette, three-fourths in number and value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, composition or otherwise, and that an application shall be made to the court to stay proceedings in the bankruptcy for such period as the court shall think fit.

Creditors may resolve (sect. 185) that estate be wound up, &c.

The proceeding contemplated in this and the following clauses seems to require a deed; it leaves a discretion in the court to allow the bankruptcy to proceed or not (*see sect. 187, post*), and it does not require any adjournment of the meeting to reconsider the resolution to wind up. In these three respects it differs from the proceeding under the 110th section. It also requires the consent of a different majority, the 110th requiring a majority in number representing three-fourths in value, this requiring three-fourths in number and value.

Points of difference between sects. 110 and 185.

By sect. 186, the registrar shall report such resolution to the court within four days from the date of such resolution; and the bankrupt, or any creditor nominated in that behalf by the meet-

Registrar to report resolution under sect. 185 to court.

CHAP. XX.

ing, may then apply to the court that the proceedings in bankruptcy may be stayed in the terms of such resolution; and the court, after hearing the bankrupt, and such creditors as may desire to be heard for or against the resolution, and if it shall find that the resolution was duly carried, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, shall confirm the same, and make order accordingly, and in such order shall give such directions as to the interim management of the estate as it shall deem expedient.

When a day had been appointed for the confirmation or disallowance of the arrangement, on the report of the resolution, the commissioner refused to allow the bankrupt to be examined at an intervening examination meeting under the bankruptcy (*m*).

Court to be satisfied that resolution (under sect. 185) for general benefit of creditors.

The court is to be satisfied, not only that the resolution is properly carried, but that the terms of the resolution are reasonable and calculated to benefit the general body of the creditors. Similar terms occur in the next ensuing section, and will be found to be remarked on *infra*, where that section is discussed.

Court may approve of deed of arrangement if reasonable and duly executed, &c.;

By sect. 187, if the proceedings in bankruptcy be stayed as therein provided, the bankrupt, or any creditor nominated in that behalf by the meeting aforesaid, may, at any time within the period during which the proceedings are so stayed, produce to the court a deed of arrangement, signed by or on behalf of three-fourths in number and value of all the creditors of the bankrupt; and the court may consider the same, and may examine on oath the bankrupt and any of the creditors who may desire to be heard in support of or in opposition to the deed, and may make such other inquiry as it may think necessary; and if the court shall be satisfied that the deed has been duly entered into and executed, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall by order make a declaration of the complete execution of the deed, and shall direct the same to be registered with the chief registrar, and shall also, if it thinks fit, annul the bankruptcy; and such deed shall thereafter be as binding in all respects on any creditor who has not executed the deed, as if he had executed it, provided such deed be registered with the chief registrar in manner directed by the order.

may direct its registration and annul bankruptcy.

As to forms, see General Order, 12th October, 1861, rule 19.

As to what are reasonable terms, *quære*.

It does not seem easy to lay down any rule as to what the court will consider reasonable terms. It was held under the former

(*m*) *Re Abrahams*, 12 W. R. 178.

law, that on an application for arrangement under sect. 216 of the Act of 1849, where the words are "the court if it shall think the same (proposal of the bankrupt) reasonable and proper to be executed," the debtor must have satisfied the court by strong and clear evidence that the arrangement was such as ought to have been forced on a dissentient minority, and that the Court of Appeal would not interfere with the discretion of the commissioner on this point, except on a very strong case, showing that it had been improperly and unreasonably exercised (*n*).

Where it had been estimated that the assets, when realized, would amount to a sum between 800*l.* and 1,000*l.*, not including the costs of realization, and the debts to 3,900*l.*, and it was sworn and not contradicted that, if the estate were wound up in bankruptcy, the probable dividend would not exceed two shillings in the pound, it was held that a proposal to pay an immediate dividend of two shillings and sixpence in the pound, and for the delivery of the debtors' promissory notes for an additional two shillings and sixpence at a future time, not guaranteed by any other person, was not reasonable (*o*).

Thus, it seems to be for the discretion of the commissioner in each particular case, having regard to the assets, to say whether a proposal be unreasonable or not: but it may, it is presumed, be safely laid down that any proposal which could not be upheld, if contained in a deed within the 192nd section, would clearly be unreasonable within these sections: however, the converse seems not to be true, and it is submitted that deeds might be valid within the 192nd section, if executed before an adjudication of bankruptcy, which might yet not be allowed by the commissioner under these sections. As to terms unreasonable within the 192nd section, see *post*, pp. 1013 *et seq.*

The practice, under the 187th section, is that it should be referred to the official assignee to inquire as to whether the deed is duly entered into and executed, and that, he having reported in the affirmative, the court should then itself examine the deed as to its reasonableness, and, if it should deem it unreasonable or illegal, should at once interfere *ex mero motu*, and without requiring that any party should take objection to the deed, declare it insufficient and invalid (*p*). The application should be set down for

Whether proposal in any case unreasonable, at discretion of commissioner.

Semble, what would be unreasonable in a deed under sect. 192 is so under sects. 185 *et seq.*

But converse not maintainable, *quære*.

Under sect. 187, official assignee inquires as to due execution, &c. of deed.

(*n*) *Ex parte Syers*, 3 Jur., N. S. 6.

(*o*) *Ex parte Perrins*, 1 De G., F. & J. 299.

(*p*) *Ex parte Williams*, 10 L. T., N. S. 243; *Re Matthews*, 13 W. R. 728.

CHAP. XX.

hearing in the usual way, and the affidavits to be used in support must be filed pursuant to 23rd General Order of 19th October, 1852 (*q*).

Agreement to accept composition under sect. 230 of the Act of 1849, without tender, no release of bankrupt.

Semble, the law similar under Act of 1861.

Court may, under sect. 188 of the Act of 1861, entertain applications as to bankrupt's estate, or the trusts of the deed, &c.

Court to determine questions under deed by law of bankruptcy.

The mere agreement on the part of a creditor to accept a composition under the 230th section of the Act of 1849, without the tender of the amount on its falling due, was held not to release the bankrupt from his liability (*r*), and it is supposed that the same will still be the law, both under the sections now under consideration and the 192nd of the Act of 1861 (*s*); indeed, in a late case, it has been so held, under sections 185 *et seq.*, even although the creditor was abroad at the time for the payment of the composition, and it was averred that the debtor had been always ready and willing to pay it (*t*). And on an application for the sanction of the court to a composition deed, under these sections, made after the day for the payment of the first instalment, which, however, had not been paid, such sanction was refused (*u*).

By sect. 188, the court, either before or after making the order, under sect. 187, as to due execution of the deed, shall have jurisdiction to entertain any application of the bankrupt, or of any party to the deed, or of any creditor or person claiming to be a creditor, respecting the disclosure, distribution, inspection, conduct, management or winding up of the bankrupt's estate and affairs, or any act or thing relating thereto, or respecting the execution of any of the trusts or provisions of the deed, or the audit or examination of the accounts of a trustee or inspector, or the taxation or examination of the costs or charges of any attorney, solicitor, accountant, auctioneer, broker or other person acting or employed under the deed, or generally for the decision of any dispute or question, and shall also have jurisdiction to entertain any application of any such person as aforesaid, respecting any matter for the submission whereof to the court provision is made by the deed, or any matter arising between any of the said persons and any other person appearing and submitting to the jurisdiction of the court; and the court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and on entertaining any such applica-

(*q*) *Re Stevens*, 14 W. R. 49.

(*r*) *Hazard v. Mare*, 6 H. & N. 435; 30 L. J., Exch. 97; 9 W. R. 252.

(*s*) See *Re Llewellyn*, 1 N. R. 230; also *Reeves v. Hearne*, 1 M. & W. 326; *Buttigieg v. Booker*, 9 C. B. 689; Con-

stable v. Andrews, 2 C. & M. 298. See 2 M. & S. 120.

(*t*) *Fessard v. Maguier*, 13 W. R. 388; S. C., 11 L. T., N. S. 635; *sub nom. Fessard v. Mugnier*.

(*u*) *Re Maddison*, 14 W. R. 50.

tion shall have power to make all such orders as shall seem just, and to enforce all such orders as in bankruptcy.

This clause seems to give a general jurisdiction to the court,—limited, however, to the purpose of working out the trusts of the deed. Thus the court can entertain any question as to whether a person is or is not a creditor, whether any property is or is not assets; except that, on a question of this kind, its jurisdiction is limited to parties claiming under the deed, and does not extend to strangers, except on their own submission; but, under the following section (the 189th), it may summon and examine strangers as to suspected assets, or as to debts supposed to be due from such persons to the bankrupt's estate. It is the proper forum for the decision of any question, or for giving directions in any matter of doubtful conduct, arising in the course of administering the trusts of such a deed, and its discretion in all such questions is to be guided by the law and practice of the Court of Bankruptcy. The powers as regards strangers are given in almost the very words in which the like powers are conferred on the court in bankruptcy strictly speaking, and will probably have, for the purposes of the administration of the trusts of the deed, and the discovery and realization of assets to be administered under it, the same limits as define the like powers when sought to be exercised in the administration of a bankruptcy.

Court has general jurisdiction for working out trusts of deed.

Under sect. 189, court may examine strangers as to suspected assets, debts, &c.

Powers conferred by sect. 189, as to discovery of assets, &c., similar to those exercised in bankruptcy.

In addition to the jurisdiction conferred by the 188th and 189th sections, the 136th section, before mentioned, confers jurisdiction on the court in case of any claim, dispute or difference between the official assignee, the creditors' assignee, and the creditors or any of such persons, or between any persons claiming under a trust-deed, deed of composition or arrangement relating to any bankrupt's or debtor's estate, or to any money or property claimed as part of the estate of any bankrupt or debtor, on the application of either party; which should be made, if in a bankruptcy, to the court having jurisdiction in the bankruptcy; if in other cases, to the court in London. It is, however, presumed, that the jurisdiction under this clause is strictly confined to the particulars mentioned in its commencement, *i. e.* a claim, dispute or difference between the parties named, relating to a bankrupt's or debtor's estate, or to any money or property claimed as part of such estate.

By sect. 136, court has jurisdiction as to disputes, &c. between assignees, creditors and persons claiming under deed.

It is remarkable, that the jurisdiction, in case of a deed where there has been no bankruptcy, given by the 136th section, is given to the court in London, while the jurisdiction, in the case of deeds

This jurisdiction where there is no bankruptcy, is

CHAP. XX.

by sect. 136
given to court
in London.

under the 192nd section, given by the 197th, is to be exercised by the court which would have had jurisdiction if the debtor had been bankrupt (*v*). This consideration, in addition to the fact that ample provision in wider terms is made by the 197th section for the jurisdiction of the court in the matter of deeds under the 192nd section, and by the 186th and 189th, for its jurisdiction in cases of deeds under the 185th, together with the generality of the terms of the 136th section as to the description of deeds to which it refers, lead strongly to the belief that the 136th section, so far as deeds are concerned, is intended principally to meet the case of deeds registered under the 194th section, for which the only forum of administration would, but for this enactment, be the Court of Chancery. There is, however, nothing to limit the application of this section to such deeds in particular, except that, unless it be so limited, an unseemly conflict of jurisdiction may arise between the court in London, under this clause, and the court which would have jurisdiction, had the debtor been bankrupt under the 197th section.

It has been held that this section did not, on an application to dismiss a trustee, give jurisdiction to the court, to make an order directing the trust monies to be paid to the accountant in bankruptcy, and appointing the official assignee to conduct the management of the estate, there having been no prayer to that effect (*x*): but it has been held in a late case (*y*) that the Court of Bankruptcy has, under sect. 136 of the Act of 1861, jurisdiction to entertain an application by a non-assenting creditor for payment, by the trustees of a deed of assignment executed under the 192nd section, of the dividend payable under the deed.

Release conditional only, if given in deed by some under idea that other creditors would concur.
Ex parte Cazeneau.

Under the former law, creditors having executed a release to their debtor, upon a composition, for the purpose of having the bankruptcy annulled, the intention failed of effect, as the consent of some creditors could not be obtained; whereupon the debtor attempted to expunge the proofs of the creditors who had released, but it was held that the release must be held conditional only; and that the condition having failed, the release was not effectual (*z*). There seems reason to suppose, if this case was well ruled, that the

(*v*) See sect. 197, and cases on it; *Ex parte Cox, Re Eaton*, 31 L. J., Bcy. 49; *Re Humphrey*, 13 W. R. 233.

(*x*) *Ex parte Ruck, Re Wickenden*, 32 L. J., Bcy. 9; 8 Jur., N. S. 1219; 11

W. R. 126.

(*y*) *Re Coleman*, 14 W. R. 315.

(*z*) *Ex parte Cazeneau*, 9 Jur., N. S. 656; 8 L. T., N. S. 11; see *Re Gashion*, 11 W. R. 810; 8 L. T., N. S. 522.

principle of it will also apply to a deed under these sections (*sects. 185 et seq.*). CHAP. XX.

The same difficulty arises under these sections as under the 110th, upon the question whether the court has or has not jurisdiction to make orders for the sale of goods in the reputed ownership of the bankrupt, &c., after the stay of proceedings, and the reader is therefore referred to the remarks on that matter made in the discussion on the 110th section (*ante*, p. 991). It may, however, be added to those remarks, that the express grant, in the case of deeds under this section, made to the court by the 189th section of the powers which the court has in bankruptcy in cases like those to which the 189th section refers, is an implication that without an enactment the powers of the court in bankruptcy could not be exercised after the stay of proceedings, even for the purpose of discovering and realizing the assets of the bankrupt; *à fortiori*, it would seem the powers of the court could not be exercised, after such stay, for rendering the property of other persons assets to be administered under the trusts of the deed.

Same difficulty as in case of sect. 110, as to court's jurisdiction to order sale of goods in bankrupt's reputed ownership.

By sect. 189, the court shall have power, for the purpose of any application under the provisions contained in sect. 188, or for the better execution of any powers given to the court thereby, to summon, and to examine upon oath or otherwise, the bankrupt and any party to the deed, and any creditor or person claiming to be a creditor, and any person known or suspected to have any of the estate in his possession, or any person supposed to be indebted to the estate, or whom the court may deem capable of giving any information material to the full disclosure of the debtor's transactions and affairs, or to the carrying into effect the provisions of the deed; and the court may exercise, as to the examination of such persons, and the production by them of such books, papers, deeds, or documents as it shall deem requisite, the same powers that are vested in the court with relation to the examination of persons and witnesses, and the production of books, papers, deeds and documents, in matters of bankruptcy.

Power of court to summon and examine bankrupt and others as to estate, debts, &c.

This clause is taken from the 120th section of the Act of 1849, by analogy to the proceedings under a bankruptcy (*a*). Under this section it has been held that the court cannot summon and examine the trustees, unless the deed be produced, or it be shown first that the deed has been registered (*b*).

Court cannot, under sect. 189, examine the trustees, unless deed produced, &c.

(*a*) For some account of these powers, see *Ex parte Alexander, re Thin*, 1 De G., J. & S. 311; 32 L. J., Bcy. 55.

(*b*) *Ex parte Macquire*, 7 L. T., N. S. 169.

CHAP. XX.

Where bankruptcy is to proceed as if no resolution passed.

By sect. 190, if the resolution aforesaid (mentioned in sect. 185) shall not be duly reported, or if the court shall refuse the application to stay proceedings, or if the deed of arrangement shall not be duly produced, or if upon its production the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no such resolution had been passed; and the court may make all necessary orders for resuming the proceedings in bankruptcy, and the period of time, which shall have elapsed between the date of such resolution and the date of the order for resuming proceedings, shall not be reckoned in calculating periods of time prescribed by this act. It would seem that if after a resolution, under sect. 185, to stay proceedings, the court is not, upon the evidence adduced, of opinion that the deed is one to be approved of, the proper course is to adjourn the application for confirming the deed of arrangement *sine die*, with liberty to apply (*b*).

Order annulling bankruptcy to be filed and advertised.

By sect. 191, if the bankruptcy be annulled, as therein provided, the order annulling the same shall be filed with the proceedings, and notice thereof shall be given in the London Gazette.

The annulling here referred to is that mentioned near the close of the 187th section.

The two courses of proceeding just discussed, viz., that under the 110th and that under the 185th and following sections, seem intended to supply the place of the procedure provided by the Act of 1849, in the 211th and following sections down to the 224th, and in the 230th and 231st sections of that act, all which sections are repealed by the Act of 1861. It does not appear that any decisions on the older sections can be material on the construction or carrying out of the later enactments.

With reference, however, to the subject of trust deeds, it may not be without advantage to consider the provisions of sections 224 to 229 of the Act of 1849, for although all the latter sections have now also been repealed, a mode of procedure was provided by them by which a debtor, not bankrupt, might arrange with his creditors, the consent of a certain majority of the latter binding the minority; and as a great number of cases came before the courts on the subject of the validity of such deeds, and questions on some of them may perhaps still arise, it may not be out of place to discuss them shortly, and to state the decisions upon them.

(*b*) *Re Jonathan Matthews*, 13 W. R. 728.

By the Act of 1849, sect. 224, it was enacted, that "every deed or memorandum of arrangement now or hereafter entered into between any such trader and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors whose debts amount to ten pounds and upwards, touching such trader's liabilities and his release therefrom, and the distribution, inspection, conduct, management and mode of winding up of his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same; and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of bankruptcy: provided always, that every creditor shall be accounted a creditor in value in respect of such amount only as, upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such trader, shall appear to be the balance due to him."

CHAP. XX.
Deeds of arrangement by a debtor with creditors, under Act of 1849, sect. 224 now repealed.

This section was held not to be retrospective, so as to make valid a deed of composition, executed before the statute came into operation, against a creditor who had not executed it (c); but it was held to apply to instruments entered into, but inchoate, at the time of the passing of the statute 12 & 13 Vict. c. 106, and completed after the passing of the act (d).

The sects. 224 and 228 of the statute required a distribution of the whole of the estate of the insolvent among the creditors; a deed, therefore, to carry into effect an arrangement whereby the creditors were entitled to a composition of a certain amount, and the surplus of the assets was given to the trader, was held by the Court of Exchequer not to be a deed within the meaning of the 12 & 13 Vict. c. 106, and was therefore invalid (e).

Under the Act of 1849, a deed giving a composition to creditors and surplus to debtor, invalid under sects. 224 and 228.

(c) *Marsh v. Higgins*, 1 P. R. 253; 19 L. J., C. P. 297; see also *Larpent v. Bibby*, 5 H. of L. Cas. 481; 24 L. J., Q. B. 301; *Noble v. Gadbane*, 5 H. of L. Cas. 504.

(d) *Waugh v. Middleton*, 8 Exch. 352; 22 L. J., Exch. 109; *Larpent v. Bibby*, *supra*.

(e) *Drew v. Collins*, 6 Exch. 670; 20 L. J., Exch. 369; 15 Jur. 584. See also *Fisher v. Bell*, 12 C. B. 363; *Tetley v. Taylor*, 1 El. & B. 521; *Cooper v. Thorn-*

ton, ib. 544; *Bibby v. Larpent*, ib. 551, n. See *S. C.* on appeal, 5 H. of L. Cas. 481; *Noble v. Gadbane*, ib. 504; *Snodin v. Boyce*, 4 H. & N. 391; *Crüger v. Dunlop*, 7 H. & N. 525; *S. C.* on appeal, 32 L. J., Exch. 42; *Tabor v. Edwards*, 4 C. B., N. S. 1; *Gardner v. Chapman*, 8 C. B., N. S. 317; *Ex parte Wilkes*, 5 De G., M. & G. 418; *March v. Warwick*, 1 H. & N. 158; *Bloomer v. Darke*, 2 C. B., N. S. 165.

CHAP. XX.

Reservation of furniture or wearing apparel, &c., vitiated deed under Act of 1849.

Under Act of 1849, deeds should have provided distribution among all creditors, joint and separate, and, *semble*, secured or unsecured.

Formerly under sect. 228 (repealed) of the Act of 1849, creditors under arrangements with debtor had same rights as in bankruptcy.

Even the reservation of household furniture (*f*), or of the wearing apparel of the debtor (*g*), or the insertion in the deed of a power to the trustees to restore any property, however small, to the debtor (*h*), though only the allowance to which he would be entitled in bankruptcy or any less allowance (*i*), or to return the dividends of non-assenting creditors (*k*), was held sufficient to vitiate such a deed. It was doubtful whether a deed providing for the winding up of the debtor's affairs by himself, under the inspection of persons selected by his creditors, and containing no immediate assignment of his property, but a contract to assign when thereto required, was valid or not, and decisions had been pronounced each way (*l*); although the prevalent opinion was in favour of the validity of such a deed, if not in other respects objectionable. It was necessary to the validity of these deeds not only that *all* the estate should be distributable, but that it should be distributable among *all* the creditors (*m*), and this included joint creditors as well as separate (*n*), and it would seem creditors holding security as well as those unsecured, the one set of creditors being estimated for the purpose of consenting no less than the other, save that provisions were specially made for the valuation of specific securities, and for estimating the holders thereof as creditors for the unsecured balance only of their debts.

It does not seem necessary to set out the clauses relative to the practice on the execution of such deeds, as any questions which can in future arise can only be on deeds executed before the Act of 1861 came into operation.

By sect. 228 of the Act of 1849, also since repealed, it was provided that the creditors of every such trader should have the same rights respectively as to set-off, mutual credit, lien and priority, and that joint and separate assets should be distributed in like manner, as in bankruptcy; and that no creditor should be prejudiced or affected by being a party to any such deed or me-

(*f*) *Cooper v. Thornton*; *Larpent v. Bibby*; *Noble v. Gadbane*; *Ex parte Wilkes*, *supra*.

(*g*) *March v. Warwick*, 1 H. & N. 158; and *Snodin v. Boyce*, 4 H. & N. 391.

(*h*) *Cooper v. Thornton*, 1 El. & B. 544; but see *Spitzer v. Chaffers*, 14 C. B., N. S. 686; 33 L. J., C. P. 7; 11 W. R. 914; 2 N. R. 326.

(*i*) *Crüger v. Dunlop*, 7 H. & N. 525.

(*k*) *Leonard v. Sheard*, 1 El. & El. 667.

(*l*) *Ex parte Calvert*, 3 De G. & J. 95,

112; *Irving v. Gray*, 3 H. & N. 34.

(*m*) *Larpent v. Bibby*, 5 H. of L. Cas. 481; *March v. Warwick*, 1 H. & N. 158; *Macnaught v. Russell*, *ib.* 611; *Bloomer v. Darke*, 2 C. B., N. S. 165; *Irving v. Gray*, 3 H. & N. 34; *Leonard v. Sheard*, 1 El. & El. 667; *Ex parte Calvert*, 3 De G. & J. 95.

(*n*) *Ex parte Calvert*, 3 De G. & J. 95. See also *Ex parte Heath*, 4 De G. & S. 593.

morandum of arrangement as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such trader; and that every person who would have been entitled to prove in bankruptcy should be deemed a creditor within the meaning of the provisions of this act with respect to arrangements by deed.

By sect. 229, also repealed, it was provided that if any creditor of any trader should be desirous to show that the administration of the estate of such trader had not been duly conducted in conformity with such deed or memorandum of arrangement, it should be lawful for him to apply to the court by petition, supported by affidavit, stating any facts or circumstances to show that such administration had not been duly conducted, and that thereupon the court should have full power, and it was thereby fully authorized, to consider the subject-matter of such application, and it might, if it should think fit, direct any inquiry, and in such manner as it should think proper, into the subject of such application, and generally might make such order and exercise such jurisdiction in or over the subject-matter of such application and the costs thereof as to the said court should appear just.

And under sect. 229 (also repealed), might in case of improper administration have applied to court.

By sect. 232, also repealed, the arranging debtor, or any creditor whose debt had been admitted in the petition or proved, or their attornies, might inspect the petition, orders or proceedings, and all books, papers and writings relating to the matters of the petition in the possession of the assignee or filed in court. The creditors consenting to the arrangement might have been required to prove their debts (o).

And under sect. 232, arranging debtor or creditors might have inspected petition, books, &c.

It is presumed that, for the purpose of carrying into effect the administration of deeds executed before the Act of 1861, these clauses would be deemed to subsist, notwithstanding their general repeal, as the repeal does not "affect any proceeding pending at the date of the passing of the act."

Sects. 224 et seq. subsist, *semble*, as to deeds executed before Act of 1861.

It has been held that inspectors appointed by the creditors to superintend the winding up of the debtor's estate are not officers of the court (p), so as to be liable to arrest on warrant for disobedience to an order; and the principle of the decision is no doubt sound, though it may be open to doubt how far the decision itself is so, for the 266th section of the Act of 1849, under which the application was made, does not seem confined in its purview to

Inspectors winding up debtor's estate not officers of the court, *semble*.

(o) *Anon.*, Fonb. B. C. 70.

(p) *Ex parte Assignees of Picciotto*, 29 L. T. 26.

CHAP. XX.

Trustees of
deeds.

officers of the court, but seems to extend also to strangers brought properly before the court, and trustees have been ordered personally to pay costs which were occasioned by their own default and neglect of order of the court (*q*).

In this state of the law the Act of 1861 was passed, and by sect. 192 enacts:—

As to trust deeds for benefit of creditors, composition and inspektorship deeds executed by a debtor:

Under Act of
1861, sect. 192,
deeds of ar-
rangement and
winding up on
non-assenting
creditors, if
specified con-
ditions ob-
served.

192. Every deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor, and his release therefrom, or the distribution, inspection, management and winding up of his estate, or any of such matters, shall be as valid and effectual and binding on all the creditors of such debtor as if they were parties to and had duly executed the same, provided the following conditions be observed; that is to say,

Assent of
three-fourths
in number and
value of cre-
ditors.

1. A majority in number representing three-fourths in value of the creditors of such debtor whose debts shall respectively amount to ten pounds and upwards shall, before or after the execution thereof by the debtor, in writing assent to or approve of such deed or instrument:

Trustee ap-
pointed, must
execute deed.

2. If a trustee or trustees be appointed by such deed or instrument, such trustee or trustees shall execute the same:

Debtor's exe-
cution to be
attested by
attorney.

3. The execution of such deed or instrument by the debtor shall be attested by an attorney or solicitor:

To be left for
registration
within twenty-
eight days after
execution.

4. Within twenty-eight days from the day of the execution of such deed or instrument by the debtor, the same shall be produced and left (having been first duly stamped) at the office of the chief registrar, for the purpose of being registered:

Affidavit to
accompany
deed, as to
assent of
proper ma-
jority of cre-
ditors.

5. Together with such deed or instrument there shall be delivered to the chief registrar an affidavit by the debtor or some person able to depose thereto, or a certificate by the trustee or trustees, that a majority in number, representing three-fourths in value, of the creditors of the debtor whose debts amount to ten pounds or upwards have in writing assented to or approved of such deed or in-

strument, and also stating the amount in value of the property and credits of the debtor comprised in such deed :

6. Such deed or instrument shall, before registration, bear such ordinary and *ad valorem* stamp duties as are therein-after provided :

Deed to be duly stamped.

7. Immediately on the execution thereof by the debtor, possession of all the property comprised therein, of which the debtor can give or order possession, shall be given to the trustees.

Debtor to deliver property to trustees.

Few points as yet seem to have been definitely determined as to the law under this section, and conflicting decisions have been pronounced as to several matters, between which it is not easy to determine. Some points seem, however, though not without opposition, to have reached a definite determination. Thus it seems now pretty clear that an assignment of all the debtor's property is not necessary to the validity of a deed within this section, nor, indeed, is any assignment of property requisite at all (*r*) ; though it took some time to establish this conclusion.

Assignment of all debtors' property not necessary within sect. 192, nor, *semble*, of any property, but deed must be for all creditors.

It seems also clear that the deed must still be for the benefit of all the creditors, and if it exclude any creditors or class of creditors it is invalid (*s*) : in this respect the authorities upon the Act of 1849 remain of authority (*t*).

So, a deed affecting joint assets only and for the benefit of joint creditors only cannot be admitted to registration under the 192nd section, without a statement and affidavit as to the separate debts under the General Order of 22nd May, 1862, of which hereafter (*u*).

It also seems to be settled that not only must all the creditors

Benefits under deed must be

(*r*) *Clapham v. Atkinson*, 12 W. R. 342, 1062. See also *Ex parte Rawlings*, 11 W. R. 157; 1 De G., J. & S. 225; 32 L. J., Bcy. 27; 9 Jur., N. S. 316; *Ex parte Morgan*, 1 De G., J. & S. 288; 32 L. J., Bcy. 15; 9 Jur., N. S. 559; 11 W. R. 316; *Walter v. Adcock*, 7 H. & N. 541; *Re Castleton*, 31 L. J., Bcy. 71, per Knight Bruce, L. J.; *Ex parte Cockburn*, 12 W. R. 184; *Keyes v. Elkins*, 13 W. R. 180.

(*s*) *Ex parte Rawlings*, 1 De G., J. & S. 225; 32 L. J., Bcy. 27; 11 W. R. 157; *Re Shettle*, 1 De G., J. & S. 260; 11 W. R. 158; *Ex parte Morgan*, 1 De G., J. & S. 288; 32 L. J., Bcy. 15; 11 W. R. 316; *Walter v. Adcock*, 7 H. & N. 541; *Berridge*

v. Abbot, 13 C. B., N. S. 507; 1 N. R. 437; *Dewhurst v. Kershaw*, 1 H. & C. 726; 32 L. J., Exch. 146; 11 W. R. 315; *Ilderton v. Castrique*, 14 C. B., N. S. 99; 32 L. J., C. P. 206; 9 Jur., N. S. 993; 11 W. R. 755; *Ilderton v. Jewell*, 14 C. B., N. S. 665; 32 L. J., C. P. 256; on appeal, 12 W. R. 530; *Copeman v. Hart*, 14 C. B., N. S. 91; 2 N. R. 126; *Re Bryant*, 7 L. T., N. S. 442; *Armitage v. Baker*, 10 L. T., N. S. 526; see also *King v. Randall*, 14 C. B., N. S. 721; 2 N. R. 325; *Benham v. Broadhurst*, 13 W. R. 183; *Davis v. Raphael*, 13 W. R. 185; *Martin v. Gribble*, 13 W. R. 691.

(*t*) See ante, p. 1000, notes (*m*) and (*n*).

(*u*) *Anon.*, 13 W. R. 104.

CHAP. XX.
for all creditors
equally.

be objects of the benefits provided by the deed, but they must be *equally* so; if the deed provide that any inequality shall be made in the distribution under the deed (except perhaps such inequalities as would be allowed in bankruptcy, as to which exception no confident opinion can yet be advanced), such a provision will invalidate the deed; at least if it be an essential provision.

Instances.

Dingwall v. Edwards.

Ex parte Watts.

Thus, a deed which on its construction was held to require execution by the creditors, as a condition precedent to their right under it to the receipt of a first dividend of two shillings in the pound, was held invalid (*x*), though it appeared not to be a condition precedent to their right to the other instalments, and though tender had actually been made of the first dividend. So, where it was attempted under the 199th section (see *post*) to stay an adjudication on the ground of the debtor's execution of a deed under the 192nd section, and the deed provided for the administration of the property comprised in it, *subject* to the usual costs, charges and expenses of investigating the accounts and position of the debtors, and of and incidental to the preparation of the deed, the commissioners, not deeming it clear that the condition could be rejected, refused to stay proceedings under the adjudication or to dismiss the petition (*y*). And it was held that inequality was fatal to a deed, even where the inequality was all in favour of the dissenting creditors, for if there was a preference given to them over the assenting creditors, it was said that this was sufficient to invalidate the deed (*z*); doubts were, however (*a*), thrown upon this decision, and it has since been overruled (*b*). A covenant to pay scheduled creditors, though made with all the creditors, and by creditors not to sue in respect of scheduled debts, was held to be no bar to an action by a creditor not scheduled (*c*).

Inequality in
favour of dis-
senting credi-
tors held to
invalidate
deed, but since
overruled.

Inequality in
remedy,
though benefits
equal, invali-
dates.

Even an inequality in the remedy provided for creditors has been held sufficient to vitiate a deed within these clauses, though the benefits provided for them were contemplated as being and intended to be perfectly equal; thus, where a trustee was appointed for all, but a direct remedy by an action in covenant was provided for some only, the deed was held bad (*d*). However, in one case

(*x*) *Dingwall v. Edwards*, 12 W. R. 597.

(*y*) *Ex parte Watts*, 10 L. T., N. S. 74.

(*z*) *Hidson v. Barclay*, 12 W. R. 883.

(*a*) *Strick v. De Mattos*, 33 L. J., Exch. 276; 12 W. R. 963.

(*b*) *Hidson v. Barclay*, 13 W. R. 583.

(*c*) *Buvelot v. Mills*, 14 W. R. 98.

(*d*) *Ex parte Senders*, 11 L. T., N. S. 574. See also *Ex parte Cockburn*, 12 W. R. 184; *Chesterfield & Midland Silkstone Colliery Company v. Hawkins*, 12 L. T., N. S. 427; 13 W. R. 841; *Gurrie v. Copera*, 12 L. T., N. S. 432; 13 W. R. 843.

on the plaintiff's motion for judgment *non obstante veredicto*, where such a deed had been pleaded, the plea of the deed was held sufficient, but there it was said that everything must be presumed in favour of the plea, and as there was no averment that any creditor of the third part had in fact executed, it did not appear that there was any inequality (*e*).

If a provision which would prefer one creditor or set of creditors to another is in form permissive only, and separable from the rest of the provisions in the deed, then the latter may be maintained, although the unfair provision is itself repugnant and void (*f*). Thus a deed of assignment contained a provision that the trustees might be at liberty to pay in full creditors under 10*l.*, the general trusts of the deed being for the distribution of the assets *pari passu* as in bankruptcy: it was held that the provision, only affecting to empower and not to direct the trustees to pay the creditors under 10*l.* in full, was itself nugatory, for the trustees would be forbidden by the court to exercise such a power; but that, being not an essential condition of the deed, the latter should be supported (*g*).

Unfair provision, if separable, may not invalidate, though itself void.

A deed containing a provision for the same purpose, which could not be rejected as repugnant, was held invalidated by it (*h*); but a deed was held not to be invalid by reason of its containing provisions for payment of some extra costs for verification of debts, for excluding creditors, who did not prove in time, and for administering the estate as on a bankruptcy, there being a declaration in the deed that those provisions were only to be binding on creditors executing (*i*). It has also been held that where a composition deed provided that the scheduled creditors, who were assenting parties to the deed, were to receive promissory notes for instalments of the composition, and the trustee was to hold similar notes to be handed on demand to non-assenting creditors, there was no such inequality between the creditors as to vitiate the deed (*j*).

Secus, where provision not capable of being rejected as repugnant.

It has been held, that where a creditor joined as a surety for the debtor in a composition deed, made by way of covenant with a trustee to pay to such trustee a sufficient sum to enable him to pay

(*e*) *Scott v. Berry*, 13 W. R. 844.

(*f*) *Re Josephs, Ex parte Spyer*, 1 De G., J. & S. 318; 32 L. J., Bcy. 62; 11 W. R. 1008; 2 N. R. 560; *Strick v. De Mattos*, 3 H. & C. 22; 33 L. J., Exch. 276; 12 W. R. 963; *Ex parte Hutchinson*, 10 L. T., N. S. 728. See also, under former law, *Kingsford v. Swinford*, 4 Drew. 705.

(*g*) *Re Josephs, Ex parte Spyer*, 1 De G., J. & S. 318; 32 L. J., Bcy. 62; 11 W. R. 1008; 2 N. R. 560.

(*h*) *Leigh v. Pendlebury*, 33 L. J., C. P. 172; 12 W. R. 468.

(*i*) *Re Tresidder*, Law Rep., Ch. Appeals, 1, 21.

(*j*) *Blumberg v. Rose*, Law Rep. Ex. 1, p. 232.

CHAP. XX.

the creditors a composition of seven shillings and sixpence in the pound, on demand by them at any time after the day appointed for payment, and a like covenant for a further instalment of two shillings and sixpence in the pound in twelve months' time, it was not an undue preference of the surety to covenant to pay to him directly, on the execution of the deed, seven shillings and sixpence in the pound, and in twelve months a further instalment of two shillings and sixpence, without the intervention of a trustee (*j*).

Equality must be in essence of arrangement, not on face of deed only.

The equality in the status of the creditors must be truly maintained, not only as regards the face of the deed, but in the essence of the arrangement, for it has been held that a secret contract with a creditor, to induce him to assent, that he should have a larger dividend on his debt than others, even though the additional dividend was to be paid by a person other than the debtor, was a fraud on the general body of creditors, and as such sufficient to invalidate the entire deed (*k*); and a like result was held to follow where the creditor, who was to receive the additional dividend, was surety for the debtor for the payment of the general dividend, the contract for the increased dividend not being disclosed to the body of creditors (*l*). This had been well established as to compositions at common law. (*See Forsyth on Composition.*)

Consents of creditors, how computed in estimating majority.

In another case, time was given to a debtor on a representation, that a secured creditor had agreed to accept a composition on the unsecured part of his debt, which agreement his agent, who was present, did not deny. Bankruptcy supervening, the creditor was held bound by the representation, and a private arrangement previously made by him for a larger composition was set aside (*m*).

So much, at least in general terms, seems to be now admitted as law, but some difficulties still remain in the application even of these apparently simple rules, and until very recently one of these was that of ascertaining who were all the creditors, and how their consents were to be computed in estimating the majority necessary to give validity to a deed within this section; whether, that is to say, creditors holding specific securities were to be reckoned as creditors, and if so, were to be so reckoned for the amount of their debt covered by their security, or only for the unsecured balance, if any? In answer to these questions, it was held by the Lords Justices in *Re Shettle* (*n*), that creditors, whether fully and suffi-

Re Shettle.

(*j*) *Wells v. Hacon*, 33 L. J., Q. B. 204; 12 W. R. 790.

(*k*) *Heming v. Pugh*, 1 N. R. 239.

(*l*) *Wood v. Barker*, 14 W. R. 47.

(*m*) *Re Hoile*, 12 W. R. 1087.

(*n*) 1 De G., J. & S. 260; 11 W. R. 158. See also *Ex parte Watts*, 10 L. T., N. S. 74; *Turquand v. Moss*, 12 W. R. 960; and under the 185th sect., *Re Murphy*, 7 L. T., N. S. 26.

ciently secured or partly secured, must all be taken into account in estimating the necessary majority. In the case of *Ex parte Morgan* (o) the late Lord Chancellor, premising that he did not mean to overrule the case of *Re Shettle*, yet gave it as his opinion that creditors being, upon the execution and registration of such a deed, brought by sect. 197 of the Act of 1861 into the same condition as creditors under a bankruptcy, secured creditors could rank against the debtor's estate only for the balance after realizing the value of their securities; and the Court of Common Pleas seems to have agreed with the Lord Chancellor (p) in considering that this dictum did not affect the judgment in *Re Shettle*.

CHAP. XX.

Securities of secured creditors not to be deducted.

Ex parte Morgan.

The same point came again before the late Lord Chancellor in *Ex parte Smith* (q), in which case the assent of creditors who were fully secured was necessary to make up the requisite majority in number as well as in value: there were seventy creditors, of whom thirty-four assented to the deed, but among the dissenting or non-assenting creditors were a good many that were fully secured, and if they were excluded from the number of creditors, then the requisite majority had been obtained in number as well as value. The Lord Chancellor held the deed to be invalid, on the ground that a creditor though fully secured was entitled to be reckoned as a creditor, for the purpose of making up the requisite majority in number, but that if fully secured, his assent as to value was not to be estimated at anything; and his lordship expressed an opinion that the cases which seemed to rule or did rule the point in question adversely to that opinion, viz., *King v. Randall* (r) and *Turquand v. Moss* (s), were both founded on *Re Shettle* (t), in which, he said, the supposed decision on the question was only a dictum of one of the judges. On this matter, however, it will appear from a close examination of the case, that his lordship was in error, though his error is countenanced by some remarks in the conclusion of the judgment of the Lord Justice Turner, which were probably the foundation of the mistake.

Ex parte Smith.

The argument in the case of *Re Shettle*, as appears from the reports, was certainly directed mainly to the question, whether or not the assent of *fully* secured creditors was to be reckoned in value for the full amount of the debt, without allowing for the

Re Shettle considered.

(o) 1 De G., J. & S. 288; 11 W. R. 316.

(p) *King v. Randall*, 14 C. B., N. S. 721; 11 W. R. 1031; 2 N. R. 325; *Turquand v. Moss*, 12 W. R. 960.

(q) 10 L. T., N. S. 551, 803.

(r) 14 C. B., N. S. 721; 11 W. R. 1031; 2 N. R. 325.

(s) 12 W. R. 960.

(t) 1 De G., J. & S. 260; 11 W. R. 158.

CHAP. XX.

Whittaker v. Lowe.

Principle established that value of securities not to be deducted.

Relative claims of joint and separate creditors, how to be dealt with in arrangement deeds.

Ex parte Cockburn.

value of the security, but from an examination of the deed and the schedule of creditors filed in the matter at the registrar's office, it appears that, among all the creditors holding security there scheduled, one only was insufficiently secured, his debt being 750*l.* and the value of the security 600*l.*, and his assent had been obtained: so that the only question in the case in this respect must have been and was the identical question which arose in *Smith's case*, viz., whether a fully secured creditor was entitled to rank as a creditor for value to the full nominal amount of his debt, without deducting the value of the security, which would reduce that debt to nothing. The point has now, however, been at length set at rest, for in the case of *Whittaker v. Lowe* (*u*), which case was affirmed on appeal (*x*), it was decided that in computing "value" of debts in order to determine the majority in number representing three-fourths in value of the creditors under a deed within the 192nd section, the value of securities held by secured creditors is not to be deducted. Again, in *Re Stark* (*y*), an application was made to the present Lord Chancellor for an order to register a deed, which had been assented to by three-fourths of the creditors in number and value, estimated without deducting the value of securities of secured creditors, the registrar having felt a difficulty in allowing it to be registered, and his lordship made the required order, on the ground that, notwithstanding the dictum of Lord Westbury in *Re Smith*, he felt himself bound by the solemn decision of the judges in *Whittaker v. Lowe*. It may, therefore, be considered as settled that the assent of secured creditors for the full nominal value of their debts cannot be neglected in computing the majority in value as well as in number.

Closely allied to the question last discussed is that, as to how joint creditors are to be dealt with where the debtor has been in trade in partnership, and how separate creditors are to be reckoned where the deed is meant to wind up the affairs of or to compound with the creditors of a firm. No judicial answer had, so far as we know, been given to either of these questions until very lately, since the passing of the Act of 1861. It was argued, indeed, in one case (*z*), that two deeds were bad where the debtors had been in partnership up to the date of the deeds, and the assents to the requisite amount were only shown of the creditors of each debtor, including joint and separate creditors, all as one class, because

(*u*) Law Rep., 1 Exch. 74; 13 W. R. 723.

(*x*) 14 W. R. 197.

(*y*) Law Rep., 1 Ch. Appeals, 150.

(*z*) *Ex parte Cockburn*, 12 W. R. 62.

that, under such an arrangement, the joint assets which might be ample for the payment of the joint debts would be distributable among separate creditors, to the possible detriment of the joint creditors. It was, however, held, that the question could not be raised in that case, as no evidence had been offered that there was any joint estate, and unless there was, no injustice could be done. In a late case, however, the question has been determined. A deed provided a single composition for joint and for separate creditors, and purported to be assented to by a majority of the said creditors, and on objection was held to be valid within the 192nd section (a).

Walker v. Nevill.

Deed providing single composition for joint and separate creditors, held not invalid.

This, however, was a case in which the deed was pleaded in bar of an action, and the plea was demurred to, and there was no averment as to the value of the joint or of the separate assets; it therefore only decided that a deed containing no assignment of property, where the same composition is provided for the joint and for the separate creditors, and is assented to by the proper majority of them all taken together as one class, is not on the face of it bad, within these sections. This decision is no doubt correct, even taking into account what is submitted to be the true principle on which such cases should be dealt with. But should the same rule prevail where there is an assignment of property? This, it is submitted, must be answered by the answer to the question as to secured creditors; wherever there is joint estate the joint creditors should be looked on as secured creditors to the value of the joint estate; and, in estimating their assents to a deed intended to compound the debts of one of the partners, such assents should be estimated according to the rule above given with regard to secured creditors; in like manner, in estimating the assents on a deed compounding the debts of a firm, if there is joint estate the separate creditors of each debtor are to be regarded as secured to the extent of the separate assets of each debtor, and their assents reckoned only for the balance as before recommended, though it is admitted that the calculation may in such cases be most intricate, and it is questionable whether any deed attempting so much could be framed which would be valid under these clauses, unless a deed assigning all the joint and separate assets for distribution as in bankruptcy, assented to by the proper majority of all the creditors

Walker v. Nevill considered.

Where no assignment made.

Where property assigned.

Suggested course to meet difficulties.

(a) *Walker v. Nevill*, 11 L. T., N. S. 774. See also, under former law, *Ex parte Calvert*, 3 De G. & J. 95; *Ex parte Heath*, 4 De G. & S. 593.

CHAP. XX.

taken as one class, and also by the proper majority of the joint and the separate creditors of each debtor taken as separate classes. Where there is no assignment of property, but a release is given on a mere contract to pay a composition, there the case is assimilated to that of secured creditors abandoning their security and coming in on equal terms with those who are unsecured.

It has been held no objection to a deed assigning all the joint and separate assets in manner just mentioned, that one of the debtors had, in fact, no separate estate (*a*).

Deed confined to joint assets not to be registered without affidavit as to separate debts; and such a deed not binding on separate creditors of partners.

It has been before seen, that a deed confined to joint assets and for the benefit of joint creditors only, does not come within the 192nd section (*b*), so as to be capable of being registered under it, without a statement and affidavit as to the separate debts under the General Order of 22nd May, 1862: and it has been held, in a recent case, that a composition deed, under the 192nd section, between the members of a firm with the creditors of the firm, is not binding on the separate creditors of each partner (*c*).

If debtor liable, only secondarily, as drawer, &c. of bill, &c. not due at date of deed, holder of bill not bound by deed, *quære*.

Where the debtor is liable on bills of exchange or other negotiable securities, secondarily only, *e. g.*, as drawer or indorser of a bill, or indorser of a note not yet overdue at the date of the deed, but not as acceptor of a bill or maker of a note, the holder it would seem is not a creditor within the meaning of this clause, and is not bound by the deed. This opinion is advanced with diffidence, especially when it is considered that the 200th section of the act, which is but a branch of the 192nd, makes express provision for the case of a debtor being liable as drawer or indorser of negotiable securities, and treats the holders as creditors. The contract, however, of a drawer or indorser is only to indemnify the holder, if the acceptor or maker makes default at maturity, and even then he is entitled in general to notice of dishonour in due time after such default made by the acceptor or maker; for this reason there is in bankruptcy no immediate right of proof against the drawer or indorser until the acceptor or maker has made default, and notice of dishonour has been served, unless in some special cases where notice of dishonour may be unnecessary. The holder, upon such default and notice, where notice is necessary, may become entitled to prove in bankruptcy; and it might be supposed that this would entitle him to be treated as a creditor

(*a*) *Ex parte Oldfield*, 11 L. T., N. S. p. 1003.
756.

(*b*) *Anon.*, 13 W. R. 104; see ante, v. *Westall*, 14 W. R. 177.

(*c*) *European Central Rail. Co. Limited*,

under the deed; but, irrespective of the fact that the holder at the date of the deed may not be the holder at the maturity of the instrument and default, the principle above enunciated would, if sound, apply to the case where an acceptor for the accommodation of the debtor takes up the bill at maturity, who, on the same grounds, being entitled on taking up the bill to prove in bankruptcy, would be, if the principle suggested be valid, entitled to assent to, and would be bound by, the deed. This has been expressly ruled not to be so (*d*), and therefore, it is submitted, the only ground for supposing that the holder of a negotiable instrument, in the circumstances above mentioned, should be taken as a creditor, must fail, and such holder must be considered not a creditor of the drawer or indorser who has executed the deed. If the compounding debtor be acceptor or maker of a current bill or note, the holder is still, no doubt, to be estimated as a creditor; or if the bill or note is already matured, and the acceptor or maker has already, at the date of the deed, made default, and, in cases where it is necessary, due notice of dishonour has been given, then of course the holder is a creditor, even where the compounding debtor has only been liable as drawer or indorser; and this being so, it is submitted that it is to such a case that the words in the 200th section, referring to the debtor's liability as drawer or indorser, must be referred, or else the case of *Mare v. Underhill* (*e*) must be reviewed.

Mare v. Underhill.

It has been held, also, that a claimant in respect of costs recovered after the execution of the deed was not, in respect of such costs, a creditor (*f*).

Claimant for costs recovered after execution of deed, not a creditor.

It becomes, of course, a matter of importance to ascertain who are creditors and to what amount, in order to estimate, in the first instance, whether a deed is valid or invalid for want of the proper consents; and thus the question as to the debt of a third person may come in issue between the debtor and a dissentient creditor impeaching the deed. In such a case, it has been held that it is not competent for the debtor himself to exclude, in reckoning the assents, a claiming creditor who is entered in the schedule as a creditor, though opposite his name is a notification that his debt is disputed; nor can he apply to have the creditor's name expunged in a proceeding to which the claiming creditor himself is not a party (*g*). It is difficult to offer a confident opinion whether a

Debtor cannot exclude claimant entered in schedule in estimating assents.

Quære, a dis-

(*d*) *Mare v. Underhill*, 12 W. R. 102.
(*e*) 12 W. R. 102.

(*f*) *Re Wheeler*, 11 W. R. 988.
(*g*) *Re Middleton*, 10 L. T., N. S. 517.

CHAP. XX.

senting creditor not so bound by statements in schedule.

"Creditor" a person having proveable claim, whether a debt or not.

Cases as to quantum of debt.

Equality of provisions of deed.

Exclusion of any class of creditors, an inequality.

Deed assigning all property for distribution as in bankruptcy, good.

Ex parte Cockburn.

dissentient creditor would be limited in the same way, for he ought not to be bound in any way by the schedule from showing that the debtor's statement was not trustworthy; and it is presumed that he might offer any evidence which would ordinarily be admissible as against the debtor to show that the debts were erroneously stated in the schedule.

In a late case it has been decided, that in the Bankruptcy Acts the word "creditor" means any person having a claim proveable under the bankruptcy, whether a debt or not (*h*).

Some cases have been reported on the quantum of the debt, though they hardly appear worth citing, being only plain decisions on general principles of law, ruling nothing specifically regarding the law on the subject in hand. Thus it has been held that a debtor executing a deed cannot, in estimating his creditor's debt, deduct income tax on interest in arrear, which he would have been entitled to deduct in making the payments if he had made them when they were due (*i*). So it has been held in the same case, that a specialty creditor, to whom interest was payable on his specialty, was entitled to be reckoned a creditor for principal and interest up to the date of the registration of the deed, and not merely up to the date of the stoppage of payment (*i*).

Next comes the difficulty, as to what provisions are, and what provisions are not, for the equal benefit of all the creditors? In some cases the answer will be easy enough: thus, as has been already remarked, if any class of creditors is altogether excluded by the terms of the deed from its benefits, it is not for the equal benefit of the creditors, and is invalid (*k*). On the other hand, if the deed be a mere assignment of all the debtor's property, to be distributed, as in bankruptcy, for the benefit of his creditors, with or without a release to him upon the perfecting of the assignment, there is little doubt that such a deed would be valid, so far as the matter now under consideration is concerned (*l*): but between these limits lie many debateable positions. If the deed is of such a nature as that the debtor, while conforming to its terms, may yet evade his duty of justice and impartiality as between different classes of creditors, or as among different individual creditors, such a deed, it has been held, is void. Thus, in *Ex parte Cockburn* (*m*), the

(*h*) *Woods v. De Mattos*, 14 W. R. 226.

(*i*) *Ex parte Turner*, 13 W. R. 104; 11 L. T., N. S. 352.

(*k*) See ante, p. 1000, notes (*m*) and (*n*), and p. 1003, note (*s*).

(*l*) See Schedule D. to the Act of 1861, and sect. 200 of the same Act.

(*m*) 12 W. R. 184. See also *Ex parte Senders*, 11 L. T., N. S. 574.

CHAP. XX.

deed was held void, because a covenant, which might be sued on by some creditors, could not be sued on by others, and because, there being no assets actually provided to meet the composition offered, certain creditors might be paid the composition, leaving to others a right of action only against the debtor, who would then probably have no assets to meet the demand. In *Dewhirst v. Jones* (n), however, the debtor assigned his property to a third person, who along with the debtor covenanted to pay six shillings and eightpence in the pound by two instalments by promissory notes, and the deed contained an absolute release of the debtor, but there was no trustee in the deed. It was held, nevertheless, that the deed was good. In the case of *Clapham v. Atkinson* (o), a deed of composition was maintained, though it would seem that an inequality as fatal as that in *Cockburn's Case* might fairly have been alleged against it: in the case in question, the contract provided for a mere money composition to be paid by the debtor on a day named, or whenever thereafter demanded, and that the creditors severally, on payment of the composition to them respectively, should execute a release. Under this deed, if the debtor wished to prefer a creditor, he might refuse to pay the composition to him, and allow him to recover judgment for the entire debt, while to a hostile creditor he might tender the composition and require a release; it does not seem easy to see how the one deed could properly be supported and the other condemned, unless, indeed, failure of payment of the composition to one creditor should be held to vitiate the release as to all (p). As to other inequalities which have been held to vitiate or not to vitiate deeds, the reader is referred to cases commented on and cited in the remarks which follow, as to unreasonable conditions.

Deed void, containing covenant, which may be sued on by some, though not by all creditors.

Deed good, there being no trustee, but a third person as surety guaranteeing the composition.

It has been held by some of the Courts of Common Law that, if the terms of the deed are unreasonable, the deed cannot be supported (q). Thus, it has been held that a covenant, on the part of the creditors, to indemnify the debtor from any demand in respect of any negotiable security negotiated by any of the creditors, was an unreasonable provision to enforce on a dissentient

Unreasonable conditions.

(n) 12 W. R. 885.

(o) Ibid. 342.

(p) *Re Gashion*, 11 W. R. 810; 8 L. T., N. S. 522; see *Ex parte Cazeneau*, 9 Jur., N. S. 656; 8 L. T., N. S. 11. Also *Hazard v. Mare*, 6 H. & N. 435; 30 L. J., Exch. 97; 9 W. R. 252; and cases cited, ante, p. 994, notes (s) and (t).

(q) *Woods v. Foote*, 1 H. & C. 841; 11 W. R. 383; 32 L. J., Exch. 199; *Ingelbach v. Nicholls*, 14 C. B., N. S. 85; 11 W. R. 697; 9 Jur., N. S. 1015; 2 N. R. 75; *Dell v. King*, 33 L. J., Exch. 47; 12 W. R. 280; *Nicholson v. Potts*, 12 W. R. 440; and cases cited infra on the subject.

CHAP. XX.

Seemle, discretion of majority of creditors only test contemplated by statute as to reasonableness.

creditor, and invalidated the deed as against him (*r*). So a provision, that each creditor bound by the deed should retire all bills or promissory notes given to him by the debtor before the date of the deed (*s*), was held in like manner to invalidate the deed against dissentients; and so, also, of a provision, that the creditors would not sue until default should be made in payment of some instalment of the composition, and that the debt of any creditor breaking the covenant in that behalf should be forfeited and extinguished (*t*). A contract, that no creditor executing, or otherwise acceding, should negotiate bills without indorsing thereon a memorandum of his accession to the deed, was held unreasonable (*u*), but this case has been overruled (*x*). So, in the same case, a covenant by each of the creditors, for himself and partners, and their respective heirs, executors and administrators, not to sue for the debts proveable under the deed, was held unreasonable as leaving a creditor liable to an action for the act of his partner (*u*); but as the case has been overruled, the reverse may be now held to be law (*x*). These decisions have introduced a new condition for the validity of such deeds beyond those expressly provided by the statute; and it might be doubted, if the matter were *res integra*, whether any such limitation was intended by the legislature in passing the act, and whether the discretion of the necessary majority was not the only test, and the only security intended to be provided for the reasonableness of the provisions to be contained in the deed. However, even if this were so, the decisions in the earlier two of the cases just mentioned, and indeed in most of the others decided on the ground of unreasonableness, might be supported on that of inequality, as the deeds in those cases might certainly bear hard on some creditors,—*e. g.*, in the two cases specifically referred to, on those who had negotiated bills or notes of the debtor,—while they left untouched other creditors. The case of *Dell v. King* might, perhaps, be supported also on this ground, as the condition contained in it might have occasioned the forfeiture of the debt of a creditor who should have innocently brought his action without notice of the deed. Indeed,

(*r*) *Woods v. Foote*, supra, p. 1013, n. (*q*);
Nicholson v. Potts, *ibid.*

(*s*) *Ingelbach v. Nicholls*, 14 C. B., N. S. 85; 11 W. R. 697; 9 Jur., N. S. 1015; 2 N. R. 75; *Balden v. Pell*, 33 L. J., Q. B. 200; *Ex parte Watts*, 10 L. T., N. S. 74; 12 W. R. 1004.

(*t*) *Dell v. King*, 33 L. J., Exch. 47; 12 W. R. 280; *Balden v. Pell*, 12 W. R. 1004; *Thompson v. Gunthorpe*, 11 L. T., N. S. 708; *Lyne v. Wyatt*, 13 W. R. 688.

(*u*) *Hidson v. Barclay*, 12 W. R. 883.

(*x*) 13 W. R. 583; 3 H. & C. 9.

CHAP. XX.

in *Nicholson v. Potts* (y), Mr. Justice Willes seems to have intimated an opinion, that inequality among the creditors is the true root of the objections which have been held fatal to deeds under this section, and that no condition is *unreasonable* which does not involve some such inequality; but, until the cases which hold that deeds must not only be equal but reasonable shall have been reconsidered by superior authority, they must, it is presumed, be accepted as defining the law, so far as they do define it; and the question therefore remains what provisions are reasonable and what not, which is always a difficult one to answer.

No condition unreasonable which does not involve inequality, *quære*.

The judgment in the case of *Dell v. King* (z), it is submitted, goes in any case too far, inasmuch as it declares that a debtor has no right to make his creditor covenant, as also that he has no right to forfeit the creditor's debt. Now, a common covenant in such deeds is a covenant not to sue or molest the debtor pending the time for payment of the composition; and if this covenant is sufficient of itself to invalidate the deed, then nearly all the cases in which such deeds have ever been upheld were wrongly decided, and the deeds themselves were invalid, for almost all of them in one form or another contain covenants of this, or an equivalent description. The case above cited of *Clapham v. Atkinson* (a) contained, in fact, a covenant to execute a release on payment of the composition, and recited an agreement to accept the composition in full discharge of the debt, which would be equivalent to a covenant not to sue for the debt until failure in payment of the composition (b); and, indeed, it is hardly possible to conceive a deed of composition which, under one form or another, should not contain a covenant, either express or implied, not to sue the debtor until failure or breach of the arrangement contemplated by the deed, or else an immediate release of the debtor, which would be still more objectionable; to this extent, then, it is submitted, the case of *Dell v. King* (c) can hardly be supported.

Dell v. King considered.

Debtor justified, *semble*, in requiring creditor to covenant.

Clapham v. Atkinson.

In a later case (d), a deed of assignment contained a covenant on the part of the executing creditors not to sue, and if they did, that the deed should be a release; yet such deed was held valid, at least so far as to preclude an adverse creditor from obtaining an

(y) 10 L. T., N. S. 192.

(z) 33 L. J., Exch. 47; 12 W. R. 280.

(a) 12 W. R. 342, 1062.

(b) See per Crompton, J., *Keyes v. Elkins*, 13 W. R. 181. See also Br. Abr. Cov. pl. 4; *Pordage v. Cole*, 1 Wms. Saund. 319 l; *Duke of St. Albans v. Ellis*,

16 East, 352; *Holles v. Carr*, 3 Swanst. 647; *Cannock v. Jones*, 3 Exch. 233; *Giles v. Hooper*, Carth. 335; *Courtney v. Taylor*, 6 M. & Gr. 851.

(c) 33 L. J., Exch. 47; 12 W. R. 280.

(d) *Ex parte Smith*, 12 W. R. 692.

CHAP. XX.

adjudication against the debtor. So, in other cases (*e*), it has been distinctly held that a covenant simply not to sue was no objection to such a deed.

Contract reasonable, *semble*, binding creditors to do, under deed, what law compels under bankruptcy.

It has since also been held that where a deed registered under these sections contained a general release, it might be pleaded as a release against a dissentient creditor, as well as against one executing (*f*): and where the assenting creditors were made parties of one part, and the dissenting creditors named as parties of another part, and the deed reciting an arrangement for composition and release, went on to release the debts of the executing creditors only: it was held, that this might be pleaded as a release against a dissenting creditor, the covenant involved in the recital operating as such (*g*). And, if the doctrine be maintained that the provisions of the deed must be reasonable, it is submitted that any contract might *reasonably* be enforced on creditors which stipulated for the doing in the case of a composition anything which the law would compel them to do under a bankruptcy; thus, they might, it is submitted, be *reasonably* compelled, by the majority, to release their debtor upon payment of the composition, and to stay actions in the meantime, except such as are *bonâ fide* brought to establish a disputed right, or liquidate a disputed demand, though not, perhaps, to execute any new instrument of release; and if we go beyond this, surely it may fairly be said to be *unreasonable* to compel a creditor to take less than his whole debt in discharge of the whole, without at least requiring the debtor to give up all his property for the benefit of the creditors, and yet it is clearly decided that the proper majority may compel the minority to do this; it is difficult to see where else to draw the line, then, between what is reasonable and what is not, than at the point above suggested, and unless it be drawn there, the measure of reasonableness must in each case, it seems, rest in the discretion of the individual judge who may happen to try it.

Held not reasonable to require verification of creditors' debts to be as trustees should direct.

It has been held not unreasonable to require the creditors to prove their debts as in bankruptcy (*h*), but it has also been held that a provision was unreasonable that required the verification to be by declaration, or in such other manner as the trustees should deem expedient; although such discretion would of course be con-

(*e*) *Re Edis*, 12 W. R. 1013; *Ex parte Hutchinson*, 10 L. T., N. S. 728; *Walker v. Nevill*, 13 W. R. 523; 11 L. T., N. S. 774.

(*f*) *Whitehead v. Porter*, 12 W. R. 742.

(*g*) *Wells v. Hacon*, 12 W. R. 790.

(*h*) *Ex parte Smith, Re Wyatt*, 12 W. R. 692; 10 L. T., N. S. 311, sub nom. *Ex parte Wyatt, Re Wyatt*; *Strick v. De Mattos*, 12 W. R. 963.

trolled by the court (*i*). It has been decided that a proviso in a deed under the 192nd section, that the debtor should pay the composition named in the deed, as soon as a trustee named should certify the due execution of the deed, and that it had been assented to by three-fourths in value of the creditors, was unreasonable (*j*). On the other hand, clauses in a composition deed empowering the trustees to sell any part of the property to the debtor, with or without security, and providing that a creditor not giving notice of his debt till after a dividend had been paid, should only be entitled to share in subsequent dividends, were held not to be unreasonable, the court holding that it must be assumed the trustees would act without negligence or fraud (*k*).

A release extending in terms to damages and causes of action not accrued at the date of the deed has been held not to vitiate it, as such release would be controlled by recitals in the deed (*l*).

It has been held, also, that a deed of composition was not unreasonable which provided for the payment of instalments during seven years, and contained no covenant by the debtor with the creditors to pay the instalments, but only a covenant by the debtor with a trustee (*m*).

So it has been held not unreasonable in an inspectorship deed, that it authorized the inspectors to set aside a dividend for any creditor who had not assented, or whose debt should not at the time have been ascertained, and if no such sum were set aside to pay him out of the next monies in hand, not disturbing former dividends (*n*). Again, in a somewhat similar case, where the deed provided, that if dividends were declared before all the creditors had assented, or before their respective debts were ascertained, the inspectors should retain enough to pay the dividend to such as should not have assented in the first instance, and should pay the same to them on their written request, it was held, that requiring their request to be in writing did not invalidate the deed as an unreasonable condition (*o*).

It has also been decided that it was not unreasonable to provide that if the deed should not operate under the 192nd section, it should still bind the creditors assenting (*n*): and again, in another

Conditions reasonable and unreasonable.

Not unreasonable to provide that deed should bind

(*i*) *Leigh v. Pendlebury*, 33 L. J., C. P., 172; 12 W. R. 468; *Coles v. Turner*, 13 W. R. 811; but see *Re Tresidder*, 14 W. R. 113.

(*j*) *Boulnois v. Mann*, 14 W. R. 181.

(*k*) *Greenberg v. Ward*, Law Rep. C. P., May 25, 1866.

(*l*) *Haselgrove v. House*, 14 W. R. 128.

(*m*) *Stone v. Jellicoe*, 12 W. R. 922.

(*n*) *Strick v. De Mattos*, 12 W. R. 963; *Hidson v. Barclay*, 3 H. & C. 9; 13 W. R. 583.

(*o*) *Hernulewicz v. Jay*, 13 W. R. 807.

CHAP. XX.

assenting creditors, though not operating under sect. 192.

Not unequal, &c. to reserve creditors' rights against sureties, &c.

Conditions made by statute necessary to deeds.

Under condition 2, execution by all trustees named, indispensable.

case, that it was not unreasonable that the deed provided for payment out of the estate, of the costs incurred in or relating to the stoppage of payments, and of the deed, and of carrying it into effect (*o*).

It has been held not unreasonable that the deed provided for an allowance to the debtor, and for a return to him of such furniture as might be deemed expedient (*p*).

A reservation of the rights of creditors against sureties and persons other than the debtor is neither unequal nor unreasonable (*q*).

In one case it was held that a deed between the creditors of the first part, the debtor of the second part, and a third person of the third part, by which in consideration of a composition to be paid by the third person the creditors agreed to release the debtor, and the third person covenanted in consideration of such release to pay the stipulated composition on the debts of the debtor, but in which no contract or assignment on the part of the debtor herself was contained, was irregular, and not within the Act of Parliament (*r*); but on what grounds this decision rested it would be perhaps impossible to conjecture.

Where, however, a deed of composition between the debtor of the one part, and the creditors who executed or approved of the same "on behalf of themselves and all and every the creditors of the said debtor" of the other part, contained a release of debts, but no *cessio bonorum*, nor any covenant by a trustee to pay the composition; it was held to be invalid as against a dissenting creditor (*s*).

As to the statutory conditions necessary to the validity of a deed under the 192nd section, the first has already—in the author's comments on the 110th and the 185th and following sections—been remarked on, and the remarks which follow below on the fifth condition (*see post*, pp. 1019 *et seq.*) are applicable in part to the first also. The second (*p*. 1001) seems in general sufficiently intelligible, but on it some few cases have been decided; thus it has been held that execution by all the trustees named is necessary, and that the omission to do so by any one of them would be fatal (*t*). The clause contemplates cases in which no trustees exist, and it has been held that their existence is not *per se* necessary to the validity of a deed within the section (*u*).

(*o*) *Strick v. De Mattos*, 12 W. R. 963.

(*p*) *Re Edis*, 12 W. R. 1013.

(*q*) *Keyes v. Elkins*, 13 W. R. 180.

(*r*) *Ex parte Roper*, 13 W. R. 526.

(*s*) *Re Cobb*, 14 W. R. 289.

(*t*) *Ex parte Bennett*, 5 L. T., N. S.

493; *Ex parte King*, 13 W. R. 330.

(*u*) *Dewhirst v. Jones*, 12 W. R. 885; 10 L. T., N. S. 538, *supra*, p. 1013; but see *Ex parte Cockburn*, Judgment, 12 W. R. 186.

The third condition (*p.* 1001) seems to require no comment. Attestation out of the realm, by a person appearing to exercise a function analogous to that of attorney or solicitor here, was admitted in one case (*v*), but it is doubtful whether the court has any power so to extend the enactment of the legislature in a case not provided for. The debtor's execution may be by attorney, provided the execution by the debtor of the power of attorney be duly attested by a solicitor, &c., as well as the execution of the attorney, which must also be so attested (*w*).

Debtor's execution may be by power of attorney, *semble*.

The fourth condition (*p.* 1002) becomes reasonably intelligible by the aid of the sixth (*p.* 1002), which will presently be noticed, and by the light thrown on it from the 194th and 195th sections of the act, of which hereafter. (*See post, pp.* 1029 *et seq.*)

It may here be remarked, however, that by Order of the 24th of June, 1862, the office for registration was changed from Basinghall Street to the Chief Registrar's Office, in Quality Court, Chancery Lane, from the 19th of July, 1862, and after that day every deed or instrument left for the purpose of registration, and every copy deed and account of debts, and every certificate of a trustee, and all affidavits, and other documents relating to such deed or instrument, were to be filed at such last-mentioned office, and not elsewhere.

Office for registration.

A distinction is to be observed between the registration under this section and that under the 194th, presently to be noticed, and also it would seem that under the 187th section, by order of the court. The former distinction is observed and dwelt on by the late Lord Chancellor in the case of *Ex parte Morgan, re Woodhouse* (*x*). Both are noticed in the General Orders, 12th October, 1861, r. 20; and after some doubt (*y*), it seems now decided that the court has, under this section, no jurisdiction in any case to extend the time for registration (*z*).

Registration under various sections distinguishable, *quære*.

Court has no jurisdiction to extend time for registration under sect. 192.

The deed must be produced and left by a solicitor of the court (General Order, 24th June, 1864), and such production must be accompanied with that of all the documents prescribed by the General Orders duly executed (*a*).

Production of deed and documents.

(*v*) *Ex parte Lloyd*, 9 L. T. 240.

(*w*) Per L. C., *Re Bell*, 34 L. J., Bcy. 36; 13 W. R. 1002. *Semble* also, the solicitor must be a solicitor of the Court of Chancery, &c.

(*x*) 1 De Gex, J. & S. 288; 11 W. R. 316; 1 N. R. 339.

(*y*) See *Re a Trust Deed*, 10 L. T., N. S. 245.

(*z*) *Re Simpson*, 12 W. R. 351; *Re Skinner*, 13 W. R. 114; and see cases there cited. *Ex parte Power*, 13 L. T., N. S. 451.

(*a*) See *Ex parte Skinner*, 13 W. R. 114. As to what these documents are, see G. O., 12th Oct. 1861, r. 19; G. O., 22nd May, 1862; G. O., 24th June, 1862; G. O., 23rd July, 1862; G. O., 24th June, 1864.

CHAP. XX.

*Ex parte
Skinner.*

Want of verification of documents by commissioner.

Assents must be absolute before registration.

Consents obtained by misrepresentation.

Burden of proof on those supporting deed.

Court will admit affidavit under 5th condition, if made by person able to depose.

Affidavits under condition 5, sect. 192.

In one of the cases noticed below, *Ex parte Skinner*, the want of proper verification of *every* page of the account in the affidavit by the signature or mark of the commissioner to administer affidavits at the time the affidavit was produced, was held sufficient reason for refusing to register, and such refusal having delayed the registration beyond the twenty-eight days, it became impossible to comply with the requisition in this respect of the act, and the deed failed.

The fifth condition (*p.* 1002) has given rise to some doubts, it having, for instance, been held that the assents to be valid must be absolute before the registration of the deed, and that a conditional assent becoming absolute upon the registration would not suffice (*b*); it seems, however, that a consent, though originally conditional only, may be a valid assent if the condition has been fulfilled before the date of the registration. If the consents have been fraudulently obtained by misrepresentation, the deed may of course be impugned, and where false representations as to the amount of debt owing by the debtor were made to creditors, as an alleged inducement to them to execute or assent, the burden of proof is thrown on those supporting the deed to show that the requisite majority assented independently of such misrepresentation (*c*).

The affidavit required by the fifth condition is, by the Order of 22nd May, 1862, in terms required to be by the debtor, but this order notwithstanding, the court will in a proper case receive the affidavit of any person able to depose to the facts (*d*); he must, however, show that he is able so to depose; and therefore an affidavit made on a statement of affairs as they existed five months before has been refused (*e*).

Thus, where the debtor was deranged in mind (*f*) or was absent from England, on an affidavit of that fact, the affidavit of his solicitor to the matters required by the fifth condition of sect. 192 was received (*f*). So one partner being absent from England and his examination verified by affidavit of a foreign conveyancer and solicitor, though not on the rolls here, the affidavit of the partner in England was received as to the debts, though the deed seems to have been joint (*g*). But the absence of one partner in a

(*b*) *Re Rawlings*, 1 De Gex, J. & S. 225; 32 L. J., Bcy. 27; 11 W. R. 157.

(*c*) *Ex parte Goss*, 9 L. T., N. S. 734.

(*d*) *Re Springate*, 11 W. R. 219; 7 L. T., N. S. 534; *Re Hudson*, 11 W. R. 441; *Re Griffiths*, 8 L. T., N. S. 60; *Re Free-*

man, 13 W. R. 926. See also *Re a Trust Deed*, 13 L. T., N. S. 477.

(*e*) *Ex parte Granger*, 5 L. T. 464.

(*f*) See ante, n. (*d*).

(*g*) *Re Smith, Ex parte Lloyd*, 9 L. T., N. S. 240.

distant part of England was held no reason for dispensing with his affidavit, even for a time (*h*).

Where a debtor, having executed a deed under sect. 192, absconded, the court allowed registration on the affidavit of the accountant who had prepared the list of creditors, stating that to the best of his belief the list contained a true and full account of all debts owing by the debtor, and dispensed under the circumstances with the affidavit of the debtor in person (*i*).

The sixth condition seems to require no remark, except a reference to the 194th and 195th sections.

The seventh (*p.* 1003) formed the grounds for a strong argument in some of the earlier cases before cited, on the construction of the sections, that, namely, nothing short of an absolute assignment of all the debtor's property would suffice to render a deed valid within these sections; this position, as has been shown, is no longer maintainable (*k*), and the seventh clause must, therefore, be confined to the case where trustees are appointed by the deed, and property is actually assigned by it; as to what is its effect, where the deed contains a covenant to assign on demand, but no actual assignment, it is not easy to offer a confident opinion; it will depend on the construction to be given to the words "comprised therein;" the natural meaning of which, as applied to a deed would seem to be "affected by" the deed, and this would extend to property affected by a covenant to assign, as well as by an assignment. Again, the object of the clause requiring delivery of possession seems to be, to protect the creditors under the deed from the claims of creditors becoming such subsequently to the deed, who might, under a subsequent bankruptcy of the debtor, seize, under the reputed ownership clause, property intended to be divided under the deed. This reason would apply to property covenanted to be assigned as well as actually assigned by the deed, and it is therefore submitted that the words should bear their natural sense, and that a deed containing a covenant to assign property, in possession of which the debtor is nevertheless left, will be invalid under this section. In a late case, however, upon the construction of this (the 7th) clause, it was held, that where a debtor remained in possession of property, under a proviso, in a composition deed, that he should remain in possession till default in payment of the composition, there was a sufficient compliance

Absolute assignment of debtor's property how far necessary; 7th clause of sect. 192, how to be read.

(*h*) *Re a Trust Deed*, 11 L. T., N. S. 687.

(*i*) *Re Blakeborough*, 13 W. R. 105.

(*k*) See ante, p. 1003, n. (*r*).

CHAP. XX.

with the condition in the 7th clause, the court being of opinion, that the language of the clause meant (if anything) that where property is to be given up, it should be given up to render the deed binding on non-assenting creditors, and *vice versâ* (i).

Doubtful meaning of "immediately" in clause 7.

Where deed assigns all debtor's property, books of account must be given up "immediately."

It is also difficult to say what construction is to be placed on the word "immediately," but it has been held that a clause suspending for a year the duties of the trustees vitiates the deed as being inconsistent with this condition (k).

It has been also held that where the deed is a deed of assignment of the debtor's property, his books of account pass also, and must be given up immediately, otherwise the deed is bad within this section (l).

Difficulty of proving negatives under 192nd sect.

The insuperable difficulty of proving, under the 192nd section, the two negatives which it is necessary to prove, viz., 1st, that no creditors existed, other than those of whom three-fourths in value, and a majority in number, have assented to the deed; and 2ndly, that no property comprised in the deed existed, in possession of which the trustees have not been put; renders it impossible for trustees under such a deed to make a good title, at least to real estate, under the section. It is therefore proper, in every case of assignment under it to trustees on trust to sell and realize for the benefit of the creditors, that, in addition to the formalities provided by the section, recourse should be had to the 68th section of the Act of 1849, and advertisements made thereunder, by which means title may be made after the expiration of three months, without any objection being founded on the nature of the deed itself as an act of bankruptcy. If these precautions be not taken, twelve months must elapse before a good title can be made.

Consequent defect in trustees' title to real estate under deed.

This defect cured, *semble*, by advertisements under 68th sect. of the Act of 1849.

Otherwise twelve months must elapse.

Together with deed and affidavit attested copy of deed to be delivered to registrar.

Also account of debts, names of creditors, &c.

By a General Order of the 22nd May, 1862, amended by Order 23rd July, 1862, it is provided that along with the deed, and in addition to the affidavit or certificate required by the act, a copy of the deed shall be delivered to the registrar, certified by the attorney or solicitor attesting the execution of the deed by the debtor, or by any other attorney or solicitor acting on behalf of the debtor, or any trustees or other party requiring such registration (m), to be a true copy, and also, in the form given in a schedule to the order, a full account of the debts of 10*l*. and upwards, and the names in alphabetical order of the creditors, and

(i) *Johnson v. Barrett*, 14 W. R. 194.

(l) *Ex parte Goss*, 9 L. T., N. S. 734.

(k) *Ex parte Pearson*, 6 L. T., N. S. 400.

(m) Inserted by G. O., 23rd July, 1862, amending Order of 22nd May, 1862.

their residences, distinguishing those holding security, and the estimated value of the securities held by them, and distinguishing those that have assented to the deed, and the account is to be verified by the affidavit of the debtor himself. CHAP. XX.

Any creditor or person claiming to be a creditor, or the solicitor or duly authorized attorney of a creditor, is entitled, on payment to the registrar by a bankruptcy stamp of one shilling for every application for search, to inspect the copy deed or account, and to have an office copy, or extract, on paying for the same at the rate fixed for office copies and extracts in bankruptcy. Creditors entitled to inspect and have copies.

A schedule is annexed to the above order, a form of which will be found in its proper place (*post, Appendix*).

By the 200th section of the Act of 1861, which is, properly speaking, a proviso upon the 192nd, it is enacted, that, if a debtor cannot obtain the assent of a majority in number representing three-fourths in value of his creditors, by reason of his being unable to ascertain by whom bills of exchange, promissory notes, or other negotiable securities accepted, drawn, made or endorsed by him are holden, or by reason of the absence of creditors in a foreign country, or other similar circumstances, it shall be sufficient if he obtain the consent of a majority in number representing three-fourths in value of all his other creditors to such deed or instrument as aforesaid; provided that notice shall have been inserted by or on behalf of the debtor in one or more newspapers published in the county or place at which he shall have carried on business immediately prior to the date of such deed or instrument, requiring his creditors to signify their assent to or dissent from such deed or instrument by notice in writing addressed to the trustee or trustees thereof within fourteen days from the insertion of such notice, and that the affidavit or certificate of the trustee or trustees shall state the circumstances of the case, and the same shall be allowed by the court, and provided the deed or instrument be in such form as is expressed in Schedule (D.) to that act annexed, which shall vest all the estate and effects of the debtor in the trustees of such deed, and provided that all such other conditions as are thereinbefore required be duly complied with. Inability of debtor to obtain assent of creditors, from ignorance as to who are holders of negotiable securities, &c.

As to who are creditors upon negotiable securities under this clause, see *ante*, pp. 1010, 1011.

The form of an affidavit under the fifth clause of the 192nd section, which applies to this section (the 200th) also, but must of course in such case be modified, is given in the General Order of Form of affidavit under sect. 200.

CHAP. XX.

the 12th October, 1861, r. 19, as also the form of the certificate of the trustee in the like cases.

Contents of affidavit.

The affidavit or certificate must contain distinct allegations that the debtor is unable to ascertain, &c., and for this reason it ought to show that some, and what, efforts have been made to ascertain, &c., and if the commissioner is dissatisfied with the account given, the Court of Appeal will be slow to overrule his discretion in the matter (*l*).

Twelve months' delay fatal to application to rescind registration under sect. 200.

It has been held, that after a delay of eleven months no application can be entertained to rescind an order for the registration of a deed under the 200th section, nor for leave to issue execution notwithstanding the deed (*m*).

Some difficulties have arisen and others will probably arise upon the form of deed given by Schedule (D.)

Difficulties as to form of deed under Sched. D.

The first, and perhaps the most obvious, seems to be, that it is more than doubtful whether a deed in this statutory form will have any statutory effect, unless in the particular circumstances mentioned in the 200th section, so that it will, in case such a deed is relied on, be necessary to preserve clear evidence that the debtor was at the date of the deed unable to ascertain by whom negotiable securities on which he was liable were holden, or that he could not obtain the otherwise requisite assents in due time, by reason of the absence of creditors in a foreign country, or *other similar circumstances*.

Evidence as to holders, at date of deed, of negotiable securities.

"Other similar circumstances."

This question has not yet been, so far as the writer knows, the subject of decision, though an intimation of opinion upon it fell from the late Lord Chancellor, Lord Westbury, in a case of *Ex parte Mendel* (*n*), to the effect that such a deed had no statutory force, except under the designated circumstances; if this be ultimately so decided, it will become material to know what are "other similar circumstances," and as the circumstances mentioned, viz., absence of creditors abroad and the unavoidable ignorance of the debtor as to who his creditors by bill or note may be, have but one point of similarity, viz., that in each case the debtor is incapacitated, through no fault of his own, from communication with his creditors, it is presumed that similar circumstances will be held to mean any circumstances by means of which, through no fault of his own, the debtor is prevented from communicating with his creditors, and receiving their assent or dissent in proper time.

(*l*) *Ex parte Dobson*, 12 W. R. 1094; W. R. 153; S. C., on appeal, 14 L. T., *Ex parte Groom*, 13 W. R. 302. N. S. 239.

(*m*) *Ex parte Banfield, Re Ellis*, 14 (n) L. C., Jan. 27th, 1864.

CHAP. XX.

If the deed has a statutory effect, it vests all the estate and effects of the debtor in the trustees, by which words a larger effect is given to it in some respects than that of an adjudication; thus, copyholds do not under an adjudication vest in the assignees, without a further order of the commissioner: what is the effect of this section on them? Estates tail of the bankrupt, too, do not vest by the adjudication alone and the appointment of assignees: what is the effect of a deed under this section on them?

What estates, &c., pass to trustees, by deed as in Sched. D.

As to copyholds, it is of course very difficult to say what the law will be decided to be, but, so far as an opinion may be formed, it would seem that the words are imperative, and that the copyholds are by the deed vested in the trustees in like manner as if the trustees had been duly admitted, or in like manner as if the debtor had been a bankrupt and an order had been made by the commissioner vesting the copyholds under sect. 114, in the trustees. The trustees would in the latter case, it seems, be, by the 197th section, in the position of assignees in bankruptcy in respect of whom a vesting order had been made, and then they would fall under the 210th section of the Act of 1849, and be compellable to apply for admittance and compound for the fines with the lord.

Copyholds vest absolutely in trustees without admittance, or as if debtor bankrupt, and order made under sect. 114.

It may be remarked that, under an adjudication, an order would rarely, if ever, be made vesting the copyholds of the bankrupt in his assignees; the object of the statute's not vesting copyholds in the assignees as other property, being, to enable the title to be made direct to a purchaser, without any admittance of the assignees, thus avoiding the difficulty on the one side of requiring the lord to admit the assignees without payment of the customary fine, and on the other of rendering two admittances and two fines necessary.

Where debtor bankrupt, order seldom made vesting copyholds in assignees.

This advantage, it would appear, is lost in the case of a deed of the description in question, inasmuch as under the 210th section of the Act of 1849, the trustees will apparently have to pay or compound for the fines, and be admitted, and will then have, on finding a purchaser, to surrender to his use, the purchaser being compellable on his admittance to pay a new fine.

Double fines may be payable, where deed in form as in Sched. D.

As to leaseholds, the execution of such a deed is a breach of a condition not to assign, and may be a forfeiture of the lease (o).

Such a deed a breach of condition, not to assign, in a lease.

As to estates tail, the deed would seem to convey the debtor's estate of inheritance by its statutory operation, as far as he could himself convey the same, but there seems nothing in the act to

Seem, to bar estates tail,

(o) *Holland v. Cole*, 1 H. & C. 67.

CHAP. XX.

such a deed must be enrolled, as well as registered.

Omission of words of limitation in form in Sched. D.

Such a deed defective as containing no release.

give it any further operation ; and it should, therefore, if intended to bar the estate tail, be enrolled under the Fines and Recoveries Abolition Act, as well as registered under the Act of 1861 ; so as by the joint operation of the two statutes to produce the desired effect, transferring the inheritance and barring the entail.

If it is not desired that the deed should have a statutory effect, it ought never to be made use of, as the common law operation of a deed in this form would undoubtedly be to transfer to the trustees no more than a life estate in any freeholds or copyholds to which the debtor was entitled, the form in the schedule containing no words of limitation ; an objection which would alone be sufficient to condemn its use, unless in circumstances where the statute rendered it compulsory.

It has been attempted to argue that, unless the deed in this form became valid under the 192nd section, it would be altogether invalid, but the contention failed (*o*).

Another point to be observed with regard to the form of deed is, that it provides no release for the debtor on its face, although containing or affecting to contain a *cessio bonorum*. It was at first open to some doubt whether a release would not be implied from a deed of this nature ; the point has, however, become the subject of decision, and it has been held that a deed of this kind cannot be pleaded to an action brought for a debt by a creditor who has not assented (*p*), nor even by one who has (*q*).

It seems, however, open to argument, whether on receiving a dividend, or even without assenting further than he is bound to assent, he would not by virtue of the 197th section be brought within the 182nd section of the Act of 1849, and be bound to stay the action on motion to that effect by the debtor defendant.

It seems in the case of *Eyre v. Archer*, above referred to, to have been the opinion of the court that, by the same 197th section, the debtor was so far brought into the condition of a bankrupt that he might even obtain an order of discharge under the 159th section, if he had done nothing to disentitle him to it. He is in any case on the execution and registration of the deed entitled to the protection afforded by the certificate of registration under the 198th section, of which hereafter.

(*o*) *Symons v. George*, 12 W. R. 827 ; on appeal, 13 W. R. 922.

(*p*) *Ipsstones Park Iron Ore Company v. Pattenson*, 12 W. R. 344 ; *Clarke v. Williams*, 13 W. R. 294 : on appeal, 13 W. R. 923.

(*q*) *Eyre v. Archer*, 12 W. R. 916 ; 10 L. T., N. S. 615. See also remarks of L. C., in *Ex parte Brooks*, 12 W. R. 924. See *Blackford v. Hill*, 15 Q. B. 116, under 7 & 8 Vict. c. 70, s. 6.

With reference to the property that will pass under a deed of assignment within the 192nd section of the Act of 1861, the court will not hold a defeasible interest, to which an insolvent may ultimately become absolutely entitled under a power of appointment, to pass under a deed of assignment within the 192nd section, where no assignment of future property is expressly made (*r*).

In *Ray v. Jones* (*s*), the covenant was only not to sue, so long as the debtor should make no default in payment of the composition, there being no words to the effect that the covenant might be pleaded in bar, and it was held that such a covenant could not be pleaded in bar. *Ray v. Jones.*

If a deed under the 192nd section, though containing no specific release, contains a recital or agreement that the composition or other terms of the deed are to be accepted by the creditors in full discharge of their debts, the deed may be pleaded in bar by way of accord and satisfaction on an averment of performance of the terms, even against a dissentient creditor (*t*). Recital in deed under sect. 192, that composition to be in discharge of debts, is equivalent to release.

Where a deed under the 192nd section contains a release of the debtor, and an action is brought before the registration of the deed, the deed ought to be pleaded not in bar of action, but as a plea to the *further* maintenance of the action, which will not carry the costs of the action to the defendant, except costs subsequent to the plea pleaded (*u*). Deed, if action brought before registration, should be pleaded to further maintenance of action.

Where a defendant omitted to plead a deed of release under the 192nd section, and judgment was suffered to go by default, a rule nisi was on motion granted him to set aside the judgment, and for leave to plead on paying all the costs, and submitting to terms to be settled by the judge in chambers (*v*). Rule nisi granted to set aside judgment by default, where omission to plead release.

But since this case was decided, the matter has again come before the courts, and it has been held that a deed, which might have been pleaded in bar and has not been so pleaded, cannot be set up on motion to stay execution (*w*). No cases, however, seem to have been cited on the argument, in *Whitmore v. Wakerley*, and it may be doubted whether the former be not the better decision. The latter offers a debtor a ready means of giving a preference to one creditor over others, by suffering judgment, notwithstanding the release in the deed, and it ought to be the aim of the courts to But see contra, *Whitmore v. Wakerley.*

(*r*) *Re Vizard's Trusts*, 14 W. R. 496 (citing *Lee v. Olding*, 4 W. R. 398); Law Rep. Eq. 1, p. 667.

(*s*) 13 W. R. 1018.

(*t*) *Garrod v. Simpson*, 3 H. & C. 395; 13 W. R. 460.

(*u*) *Oppenheimer v. Grieves*, 7 H. & N. 533; 31 L. J., Exch. 375; *Morgan v. Harding*, 11 W. R. 65.

(*v*) *Couston v. Robins*, 12 W. R. 1012.

(*w*) *Whitmore v. Wakerley*, 13 W. R. 350.

CHAP. XX.

allow, as far as may be, every possible *locus penitentiae* to a debtor to escape from any attempt by himself or another to secure an undue preference of one creditor.

Hartley v. Mare.

In a late case plaintiffs issued a writ on a bill of exchange, to which no appearance was put in. The defendant executed a deed of inspection and assignment within five days after service of the writ, and it was registered after the time for appearance had elapsed. The plaintiffs signed judgment and issued a *fi. fa.* without leave of the Court of Bankruptcy. The sheriff, having seized, took out, on receipt of notice of the deed, an interpleader summons: and it was held that though the deed might have been pleaded, and was not, yet no process could properly issue under the 198th section without leave of the Court of Bankruptcy, and that the process issued was therefore irregular, and the inspectors entitled to the money (*r*).

Although deed of release not pleaded, no process issuable under sect. 198 without leave of court.

Ex parte Lloyd.

However, in a late case, where a composition deed provided that, in default of payment of any one instalment, all remedies of the creditors should revive, an application, under sect. 198, for leave to render process available, was held to be unnecessary (*s*).

In a composition deed under sect. 192, it was provided that if default should be made in payment of instalments, or if before composition fully paid the debtor should become bankrupt, the deed should thenceforth be void. The debtor did become bankrupt, and it was held that the deed was voidable at option of creditors, and not absolutely void, and that the sureties were not discharged (*t*).

Two creditors, where there are only two, whose debts amount to 10*l.*, are a majority within sect. 192.

It has been held in a late case that two creditors are a majority within sect. 192 (clause I.), where there are only two whose debts amount to 10*l.* and upwards respectively, and both assent to the registration of a deed of assignment of a debtor's property for his creditors (*u*).

Description of debtor should be full.

The description of a debtor in a deed under these sections should be as full and complete as in bankruptcy, but where no one was misled, the court would not allow execution to issue at the suit of a dissenting creditor under the 198th section (*v*). (*See post, pp. 1039 et seq., 1054 et seq.*)

But the creditors need not be specifically named.

It is, however, no valid objection to a composition deed, under sect. 192, that the covenant for payment of the composition was by the debtor with all his creditors, and with each of them respec-

(*r*) *Hartley v. Mare*, 13 W. R. 777.

(*s*) *Ex parte Lloyd*, 14 W. R. 616.

(*t*) *Hughes v. Palmer*, 13 W. R. 974.

(*u*) *Re Hammon*, Law Rep. 1, Ch. Appeals, June 9, 1866.

(*v*) *Re Wheeler*, 11 W. R. 988.

tively (not naming them), and it has been held in a late case, that such a covenant was a good covenant, and that the release founded on it, contained in the deed, was a sufficient defence to an action by a creditor (*w*); and this decision has been expressly followed in a later case, in which it was held to be no valid objection to a deed under sect. 192, that the creditors were not particularly named and described, but only referred to generally as "the creditors" or "all the present creditors" (*x*).

By sect. 193, the date, names and descriptions of the parties to every such deed or instrument, not including the creditors, together with a short statement of the nature and effect thereof, shall be entered by the chief registrar in a book to be kept exclusively for the purposes of such registration. Such entry shall be made within forty-eight hours after the deed shall have been left with the registrar as aforesaid, and a copy of such entry shall be published in the London Gazette within four days after the making of such entry.

Particulars of deed under sect. 192 to be registered,

and published in London Gazette.

The form of a memorandum to be given to the registrar for making the entry required by this section is given, General Order, 12th October, 1861, r. 19.

By sect. 194, every deed, instrument or agreement whatsoever, by which a debtor, not being a bankrupt, conveys or covenants or agrees to convey his estate and effects, or the principal part thereof, for the benefit of his creditors, or makes any arrangement or agreement with his creditors, or any person on their behalf, for the distribution, inspection, conduct, management or winding up of his affairs or estate, or the release or discharge of such debtor from his debts or liabilities, shall, within twenty-eight days from and after the execution thereof by such debtor, or within such further time as the court in London shall allow, be registered in the Court of Bankruptcy; and in default thereof shall not be received in evidence.

Deeds of arrangement to be registered under sect. 194 in Court of Bankruptcy in London;

in default not to be evidence.

This clause refers to all deeds of arrangement with creditors, other than such as are registered under the 192nd section (*y*), and by its introduction here interferes with the natural sequence of the clauses, which would properly run on without interruption from the 193rd to the 195th. The latter clause, however, includes in its application the deeds to which the 194th refers, and this is pro-

(*w*) *Gresty v. Gibson*, Law Rep. Exch. 1, p. 112.

(*x*) *Reeves v. Watts*, Law Rep. 1 Q. B. 412. But see *Ex parte Williams, Re Par-nell*, 14 W. R. 703.

(*y*) *Ex parte Morgan*, 1 De Gex, J. & S. 288; 11 W. R. 316; *Hodgson v. Wightman*, 1 H. & C. 810; 32 L. J., Exch. 147; 11 W. R. 574; 9 Jur., N. S. 808.

CHAP. XX.

Difference of
registration
under sects.
192 and 194.

Court may
allow further
time to register,
under sect. 194,
but without
prejudice to
fourth condi-
tion of sect.
192.

Reasons for
delay.

Permission to
register under
sect. 192, *nunc
pro tunc*.

bably the reason why the 194th was introduced before it. The 196th (*y*) and following clauses, as we shall see, have no reference to the 194th (*z*), which would more properly take its place after all the arrangement clauses, it being in reality a mere fiscal enactment, and having nothing directly to do with the administration of the law as to insolvent estates. The difference of the registration under the 192nd section from that under the 194th is pointed out and dwelt on in the late Lord Chancellor's judgment in the case *Ex parte Morgan* cited above, and is noticed in the General Order, 12th October, 1861, r. 20. Indeed, in a late case (*a*), it has been decided that sect. 197 applies only to deeds entered into and registered under sects. 192 and 193, and that sect. 194 is "parenthetical."

Under the 194th section, the court may allow further time to register, even after the twenty-eight days have expired, but it must be satisfied that the delay is reasonable (*b*); the order will be made without prejudice to any of the conditions required by the 192nd section (*c*), the fourth condition of which cannot be abrogated by any such order (*d*).

An allegation that, in consequence of the delay of the officials at the stamp office in affixing the proper stamp, the registrar's office in Quality Court was closed before the deed could be presented, was held insufficient ground for enlarging the time. But the illness of the country solicitor, and the absconding of the managing clerk of the town agent to whom the matters were intrusted, were allowed as sufficient reasons (*e*). Even a deed within the 192nd sect. has been allowed to be registered *nunc pro tunc*, but only where the deed had been mislaid by the officers at the stamp office, having been delivered in due time (*f*). In *Re Skinner*, the want of attestation by the commissioner to administer oaths, to the second and following sheets of the account sworn to in the schedule to the deed, caused a delay, and before it could be remedied the twenty-eight days had expired, it having been formerly the practice in the office to receive the account without further verification than such

(*y*) *Ex parte Morgan*, 1 De Gex, J. & S. 288; 11 W. R. 316; *Re Bennett*, 5 L. T., N. S. 493; *Re Granger*, 5 L. T., N. S. 464.

(*z*) But see contra, Judgment of Pollock, C. B., in the case of *Symons v. George*, 12 W. R. 827, where, however, no reply was heard; and the remark, therefore, is a mere dictum, opposed to the decided cases mentioned above.

(*a*) *Pearson v. Pearson*, Law Rep. Exch. 1, May 30, 1866.

(*b*) *Ex parte Jennings*, 8 L. T., N. S. 521.

(*c*) *Re Simpson*, 12 W. R. 351; *Wishart v. Fowler*, 33 L. J., Q. B. 125; *Re Skinner*, 34 L. J., Bcy. 9; 13 W. R. 114.

(*d*) *Re Skinner*, supra; *Ex parte Oates*, 6 L. T., N. S. 870; *Re Power*, 13 L. T., N. S. 451.

(*e*) *Ex parte Booth*, 9 L. T., N. S. 425.

(*f*) *Re a Trust Deed*, 10 L. T., N. S. 245.

as it bore when presented, but the practice having been changed without further promulgation of the change than a notice posted up in the office, it was held that the deed could not be registered under the 192nd section *nunc pro tunc* (g).

CHAP. XX.

Such permission refused.

The provision forbidding a deed to be received in evidence, if not duly registered, has been held to mean that such a deed shall not be received in evidence as a deed, or in support of the intention of such deed: but it has been held that the fact that the deed was executed may be proved as an act of bankruptcy by the production of the deed, though unstamped and unregistered (h) under this and the following sections, the 193rd and 194th.

Deed not registered not received in evidence as a deed;

but its execution may be proved as act of bankruptcy, *sed quære*.

The case of *Ex parte Wensley* has, however, since been expressly overruled by the judge who decided it (i), but it appears that the case could not have been closely examined either by the counsel who cited it, or by his lordship, for both fell into the mistake of supposing it a decision of Lord Campbell. A distinction may be supposed to exist between the case of *Ex parte Potter* and that of *Ex parte Wensley*, namely, that in *Ex parte Potter* the assignment bore no stamp whatever, and in *Ex parte Wensley* it was deficient, so far as appears, only by not bearing the additional stamp imposed by the Act of 1861, under which it never was intended to operate; it was in all probability well stamped as an assignment or mortgage, independently of the Act of 1861. This distinction was not raised, however, and is not, it is submitted, sound, the words in the 194th section of the Act of 1861 being for the present purpose equivalent to the words in the General Stamp Act, 13 & 14 Vict. c. 97, s. 12. The decision in *Wensley's case* would appear to be the sounder of the two; the point seems by no means a new one, and appears to be governed by the decisions in *Reculist's case* (k), which is a judgment of the twelve judges, and that in *Coppock v. Bower* (l), besides several other cases to the like effect, which will be found referred to in the last-named case, while none of these were noticed in the argument in *Ex parte Potter*.

Ex parte Wensley.

In one reported case, *Hodgson v. Wightman* (m), the objection that a deed was unregistered under this section was taken against

(g) *Re Skinner*, 13 W. R. 114; *Re Power*, 13 L. T., N. S. 451.

(h) *Re Mew and Thorne*, coram Holroyd, Commissioner, 5 L. T., N. S. 435; *Ex parte Wensley*, coram L. C., 1 De Gex, J. & S. 273; 32 L. J., Bcy. 23; 9 Jur., N. S. 315; 11 W. R. 241; 1 N. R. 183.

(i) *Ex parte Potter, re Barron*, 13 W. R.

189. See also *Ex parte Drayson*, 12 L. T., N. S. 28, where the question was discussed but no decided judgment came to.

(k) 2 Leach, Cr. C. 706.

(l) 4 M. & W. 361.

(m) 1 H. & C. 810; 32 L. J., Exch. 147; 11 W. R. 574; 9 Jur., N. S. 308; 1 N. R. 445; 7 L. T., N. S. 832.

CHAP. XX.

the production of the deed and allowed; but there the deed was offered as a deed.

In a late case (*m*) the decision in *Hodgson v. Wightman* has been expressly followed, it having been held that a deed, which being made between a debtor and all his creditors, required registration under sect. 194, was, in default of such registration, inadmissible in evidence as a deed.

Meaning of
"creditors" in
sect. 194.

No decision has, it is believed, been given on the meaning of the word "creditors" in this section, but there seems no reason for supposing that it would bear a narrower interpretation in this (the 194th section) than in the 192nd, where it has been held to mean "all the creditors." (*See ante*, p. 1000.)

As to the forms to be used in registering under this section, see General Order of 12th October, 1861, rr. 19 and 20, and General Order, 22nd May, 1862.

Deed to bear
additional de-
noting stamps.

By sect. 195, no deed or instrument whatever required to be registered as aforesaid shall be registered, unless, in addition to the ordinary stamp duty, it be also impressed with or have affixed to it a stamp denoting a duty computed at the rate of five shillings upon every hundred pounds, or fraction of a hundred pounds, of the sworn or certified value of the estate or effects comprised in, or to be collected or distributed under, such deed or instrument: provided that the maximum *ad valorem* duty payable in respect of any such deed or instrument shall be two hundred pounds.

As to whether
such stamp
duty is leviable
in case of
simple compo-
sition deed,
quære.

Under this section, where a deed is a mere money composition, made by way of covenant on the part of the debtor, to pay to his creditors a certain sum in the pound, which they agree to accept in full satisfaction of their debts, it is the practice to exact the duty of five shillings per 100*l.* on the sum contracted to be paid, and a debtor is generally too anxious to procure his protection to resist the exaction; but it may well be argued that the terms of the section do not apply to such a case. There is no particle of "estate or effects comprised in, or to be collected or distributed under" the deed. The section in terms is only applicable where property is assigned or contracted to be assigned by the deed, and, as is the case with other fiscal enactments, it ought to receive a strict interpretation in favour of the subject, and against the tax. If property be assigned, however, it ought all to be valued, and as it has been held that even a goodwill of a business is liable

All property
assigned, in-
cluding good-

(*m*) *Prichard v. Timothy*, 14 L. T., N. S. 443.

to *ad valorem* duty under the General Stamp Act (*n*), it must of course be liable under this section also.

By section 196, every such deed, on being so registered as aforesaid, shall have a memorandum thereof written on the face of such deed, stating the day and the hour of the day at which the same was brought into the office of the chief registrar for registration.

The form of this memorandum is given: General Order, 12th October, 1861, r. 19.

By section 197, from and after the registration of every such deed or instrument in manner aforesaid, the debtor and creditors, and trustees, who are parties to such deed, or have assented thereto, or are bound thereby, shall in all matters relating to the estate and effects of such debtor be subject to the jurisdiction of the Court of Bankruptcy, and shall respectively have the benefit of and be liable to all the provisions of the Act (of 1861), in the same or like manner as if the debtor had been adjudged a bankrupt, and the creditors had proved, and the trustees had been appointed creditors' assignees under such bankruptcy; and the existing or future trustees of any such deed or instrument, and the creditors under the same, shall, as between themselves respectively, and as between themselves and the debtor and against third persons, have the same powers, rights and remedies, with respect to the debtor and his estate and effects, and the collection and recovery of the same, as are possessed or may be used or exercised by assignees or creditors with respect to the bankrupt, or his acts, estate and effects in bankruptcy; and except where the deed shall expressly provide otherwise, the court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorized to do, if the debtor in such deed had been adjudged bankrupt, and his estate were administered in bankruptcy. It has been held that this clause is to be construed so strictly as to the time at which the act takes effect that rent due to the landlord on a demise to the debtor accruing after the execution of a deed of assignment by him, but before its registration, might be set off by the landlord in an action by the trustees of the deed for a debt due to the debtor by the landlord (*o*). It has been also held, that payment by a debtor of the insolvent to a judgment creditor under a garnishee order after

CHAP. XX.

will of business, liable under sect. 195.

Deed to bear memorandum of registration.

Jurisdiction of the court and rights and liabilities of the parties after registration of deed.

Sect. 197 construed strictly.

(*n*) *Potter v. Commissioners of Inland Revenue*, 10 Exch. 147.

(*o*) *Stranger v. Miller*, 14 W. R. 108.

CHAP. XX.

Same court to have jurisdiction as if debtor bankrupt on his own petition, but jurisdiction as large as in bankruptcy.

Title of trustees held to relate to date of act of bankruptcy.

Topping v. Keysell.

Sed quære, Boyle v. Blackstock.

Trustees may impeach fraudulent preference as assignees might.

What debts,

the registration of such a deed, without notice of execution by the insolvent, is a bad payment (*p*).

The jurisdiction under this clause is confined to the court, which would have had jurisdiction if the debtor were a bankrupt on his own petition (*q*). So, where the debts are under 300*l.* the county court is that which has jurisdiction in the matter of the deed (*r*); but such jurisdiction seems in every respect as large as the jurisdiction in bankruptcy; thus creditors holding security must realize their securities and prove for the balance only, or forego their rights to dividends under the deed (*s*); and again, though the terms of the deed might allow the trustees to prefer some creditors to others, the court under this clause would prevent their doing so (*t*).

So, where the trusts of the deed were for the benefit of all the debtor's creditors in like manner as if he had been adjudicated a bankrupt, and it appeared that he had before its execution committed an act of bankruptcy, which might at the date of the deed have been prosecuted to adjudication: it was held that the title of the trustees under the deed related to the act of bankruptcy so as to enable them to recover money paid to a creditor after the act of bankruptcy, with notice thereof, and before the execution by the debtor of the deed (*u*). With this case, however, the earlier case of *Boyle v. Blackstock* (*x*) is hardly to be reconciled; in that case after the execution of a deed of assignment under the 192nd section the debtor paid out a *fi. fa.* which had issued before the deed was executed, but which was not levied even by seizure until after the execution of the assignment, of which it seems the creditor had notice; it was held that the execution creditor was entitled to the money paid to the sheriff. The present writer cannot see on what principle the two cases can stand together, and he is driven, therefore, to the conclusion that the earlier in date, viz., *Boyle v. Blackstock*, has been overruled by the later (*y*). So it has been held, that trustees under a deed of this kind may impeach a fraudulent preference in the same way as assignees in bankruptcy might do (*z*).

So all debts proveable in bankruptcy, and demands made prove-

(*p*) *Wood v. Dunn*, 14 W. R. 84.

(*q*) *Ex parte Cox, re Eaton*, 31 L. J., Bcy. 49; *Re Humphrey*, 13 W. R. 233; *Re Littlejohns*, 1 N. R. 168. See ante, p. 995.

(*r*) *Re Humphrey*, supra.

(*s*) *Ex parte Morgan*, 1 De Gex, J. & S. 288; 11 W. R. 316.

(*t*) *Ex parte Spyer, re Josepha*, 1 De Gex, J. & S. 318; 32 L. J., Bcy. 62; 11

W. R. 1008; 2 N. R. 560. See, under former law, *Kingsford v. Swinford*, 4 Drew. 705.

(*u*) *Topping v. Keysell*, 12 W. R. 756.

(*x*) 8 L. T., N. S. 641.

(*y*) See also *Evans v. Jones*, 11 L. T., N. S. 636.

(*z*) *Ex parte Goss*, 9 L. T., N. S. 734.

able, although not debts properly speaking, may be proved under a deed of this kind, as, *e. g.*, a demand for damages on a contract broken before the date of the deed (*a*); but the demand of a surety, who is compelled to pay the debt after the execution of the deed, is not barred (*b*). So it seems that a secured creditor executing the deed for his whole debt, without deducting the value of the security, forfeits his security (*c*). So, by a release in one of these deeds, a person jointly indebted with the compounding debtor to a releasing creditor is not released, at least if the creditor has not actually executed the deed (*d*). So the debtor becomes subject to the general jurisdiction of the court with respect to all matters relating to the deed, and bound to obey its order; and therefore where the deed contained a contract by the debtor to deliver notes for the composition, and he refused to deliver a note when called on to do so by a creditor, the court granted a rule *nisi* against him on the application of the creditor (*e*).

&c. may be proved under deed.

So also the court has jurisdiction, on the bare application of creditors, to summon the trustee to be examined touching his dealings with the trust estate, and the Court of Appeal refused to go into the sufficiency of the grounds on which the summons was issued (*f*), but the court will require a *prima facie* case to be made for inquiry, before appointing a day for the examination of the trustees and assenting creditors (*g*); and the court has jurisdiction on the application of the trustees, to summon any person supposed to be indebted to the debtor, or suspected of having property of the debtor in his possession (*h*). The court, however, expressed an opinion that summonses in cases similar to any of those last mentioned had better not be issued, except on a *prima facie* case made on oath by the applicant for the summons (*i*); and in a case, where, under the 110th section, a deed, formerly made by the bankrupt, was adopted as the scheme for the administration of the estate, a summons to examine the trustees was dismissed for irregularity, as not having been made on an application supported by affidavit (*k*).

Jurisdiction of court.

In some of the earlier cases the court refused to allow a dis-

(a) See *Ex parte Mendel*, 1 De Gex, J. & S. 330.

(b) *Mare v. Underhill*, 12 W. R. 102; 9 L. T., N. S. 289.

(c) *Ex parte Middleton*, 10 L. T., N. S. 82; and see *Ex parte Spicer*, 12 L. T., N. S. 55.

(d) *Andrew v. Macklin*, 13 W. R. 291.

(e) *Re a Trust Deed*, 13 W. R. 20.

(f) *Ex parte Lawrence*, 1 De Gex, J. &

S. 307; 32 L. J., Bcy. 61.

(g) *Re Knowles*, 9 L. T., N. S. 267.

(h) *Ex parte Alexander, Re Thin and Flett*, 1 De Gex, J. & S. 311; 32 L. J., Bcy. 55; 11 W. R. 924; 2 N. R. 498.

(i) See cases last mentioned, and *Ex parte Lawrence*, 2 N. R. 209; *ib.* 498.

(k) *Ex parte Levy, Re Van Noppen*, 7 L. T., N. S. 168.

CHAP. XX.

Assenting or non-assenting creditors may examine debtor, when.

But creditor seeking to examine must show himself to be such.

Summons to examine trustees not granted except within reasonable time, *semble*.

Court will interpose, when.

Person summoned as supposed debtor of debtor, may not require trustees to prove validity of deed.

Court can order sale of book debts, goodwill, &c. ;

sentient creditor to examine the trustees, with a view of obtaining evidence to upset the deed (*k*), and held that, unless a creditor was prepared to abide by the deed, he had no right to interpose or inquire into the dealings of the debtor, or the nature of the property (*l*). But these cases have all been overruled by the case of *Ex parte Greenwood* (*m*), where the late Lord Chancellor held that any creditor, whether assenting or not to the deed, was entitled to examine the debtor, unless he was detaining and persisted in detaining the debtor in prison, or persisted in detaining or asserting in some other court a claim to property the subject of the deed adversely to the assignment made by the deed.

It seems, however, that a creditor seeking to examine must give evidence that he is a creditor, unless indeed the fact be admitted (*n*); and it has been held that a summons, to examine trustees of a deed, will not be granted to a dissentient creditor except within a reasonable time from its registration, not even for the purpose of inquiring what estate passed by the deed, but it seems doubtful how far this case can be supported in the last-mentioned respect (*o*).

It would seem, also, that the court will not interpose at all unless at the instance of some person interested under the deed, and then only as ancillary to the trustees in the execution of their trust (*p*).

In the case of *Ex parte Alexander, Re Thin and Flett*, it was held that a person summoned as supposed to be indebted to the debtor's estate, or suspected of having property belonging to such estate, is not entitled to put the trustees to proof of the validity of the deed within the 192nd section (*q*), and though this has been doubted (*r*), it must, it is presumed, be now taken to be determined: if the witness or person summoned can himself give evidence showing the invalidity of the deed, perhaps he may be allowed to do so on the same ground, that a witness has been allowed to challenge an adjudication, by a specific proceeding for the purpose (*s*).

So it has been held that the court can order the sale of the book debts of the debtor, and may order the goodwill of his business to

(*k*) *Anon.*, 6 L. T., N. S. 166.

(*l*) *Ex parte Mappin*, 7 L. T., N. S. 167; *Ex parte Collins*, 6 L. T., N. S. 665; *Ex parte Lawrence*, ib. 559; *Re Andrews*, ib. 756. See, however, *Re M—*, 8 L. T., N. S. 767.

(*m*) 12 W. R. 924.

(*n*) *Ex parte Dobson*, 10 L. T., N. S. 432.

(*o*) *Ex parte Nisbett*, 11 L. T., N. S.

751.

(*p*) *Ex parte Trustees of &c., Re Wake*, 6 L. T., N. S. 196. See, however, *Anon.*, 8 L. T., N. S. 767.

(*q*) 2 N. R. 498.

(*r*) *Ex parte Mappin*, 7 L. T., N. S. 167. See, under sect. 189, *Re Macguire*, 7 L. T., N. S. 169.

(*s*) *Ex parte Lane*, Mon. 12.

be sold by private contract (*t*), that is to say, where the deed is one of assignment on trust, but not where it is a deed of inspection (*u*); nor, it seems, are inspectors under the latter form of deed assimilated to assignees in bankruptcy under this section. So the court will, on the application of the trustees, make order that the letters of the debtor addressed to his place of business, be, for three months, redirected at the post office to the trustees (*v*).

CHAP. XX.

but not in case of deed of inspection.

Court will order letters for debtor to be redirected to trustees.

So the court, under this section, if a debtor to the estate neglect, on a written demand from the trustees of the deed, to pay, has given its sanction to the trustees' proceeding by action (*w*).

It has been held doubtful whether the court can under one of these deeds direct the debtors to file additional accounts, as in bankruptcy; but if such a jurisdiction exists, it has been held that an application for its exercise should be by petition stating the facts which render it necessary (*x*). The Court of Bankruptcy has also treated trustees as assignees and officers of its own so far as to make them personally pay costs occasioned by flagrant neglect of duty (*y*). So also other courts: thus, where plaintiffs in an action executed a deed under these sections, the trustees were compelled at the instance of the defendants to elect whether they would continue the action and give security for costs or stay the action under the Common Law Procedure Act (*z*).

Whether court can order debtor to file additional accounts as in bankruptcy, *quære*.

Trustees treated as officers of court.

It has been lately held by the Lord Chancellor on appeal, affirming a similar decision of the commissioner, that where a deed had been registered, by which a debtor covenanted to pay his debts by instalments, although it contained no assignment of property, the Court of Bankruptcy had jurisdiction under sect. 197 to order the production by a creditor of a mortgage deed, securing to him personal property of the debtor, his Lordship being of opinion that sect. 197 applied even where there was no property to be administered under the deed (*a*).

Jurisdiction of court under sect. 197.

The court is to administer the deed according to the law of bankruptcy, the exception in the latter part of the section applying only to matters of form or rules of practice, not to matters of substance; thus, under the exception, cases may, it would seem, if the deed so provide, be submitted to arbitration or the like, but no

Exception in latter part of sect. 197 not to extend to matters of substance.

(*t*) *Ex parte Mannoch*, 9 L. T., N. S. 521.

(*u*) *Re Carlisle Canal Co.*, 14 W. R. 16; 13 L. T., N. S. 70.

(*v*) *Re a Trust Deed*, 8 L. T., N. S. 554.

(*w*) *Re Lovell*, 6 L. T., N. S. 196.

(*x*) *Ex parte Richardson*, 12 W. R. 923.

(*y*) *Re Edis*, 13 W. R. 1068; *Ex parte White*, 13 L. T., N. S. 24.

(*z*) 1852, sect. 142; *Jope v. Farmer*, 12 L. T., N. S. 506.

(*a*) *Re Marks*, Law Rep. 1, Ch. Appeals, June 9, 1866.

CHAP. XX.

But trustees may bring actions without leave.

May not retain dividend for personal claims against creditor.

Jurisdiction of court does not extend beyond property comprised in deed.

Debtor cannot claim allowance as in bankruptcy.

Assignment by partners of joint property, not extended to separate.

But court has jurisdiction under composition deed to examine debtor as to property.

Trustees to give account to creditors as to receipts, &c.

Under deed of arrangement damages for

inequality can be made between different creditors, except perhaps such inequality as is specifically ordered in bankruptcy (*x*). Even where there are no special provisions exempting trustees under a deed, it has been held that they are not bound in formal matters by the rules of the court affecting assignees: thus they may bring actions, &c. without applying for leave (*y*). Nor can trustees or inspectors set off a dividend under the deed against a personal demand by them against a creditor so as to retain the dividend (*z*). But it seems the court acquires no jurisdiction in respect of property not comprised in the deed; so where the deed was an assignment of all the debtor's personal estate except certain leases, and contained a proviso that if the debtor should not assign the leases to the trustees at their request, the release in the deed should be void, the debtor afterwards refusing to assign the leases: it was held that the court could not order him to do so (*a*). Nor can the trusts be materially altered to make them suit the general law of bankruptcy, and therefore, without express stipulation, a debtor under one of these deeds cannot claim an allowance as in bankruptcy (*b*).

So where partners executed a deed of assignment of all the real and personal estate and effects of the assignors, and one of them was subsequently adjudicated a bankrupt on his own petition: it was held that the 197th section did not extend the natural meaning of the words in the deed, and that the joint estate only was assigned by it (*c*). But where the deed was one of composition only, containing no assignment of property, the court, on a case made by a dissentient creditor, that the debtor had concealed from his creditors the existence of certain property, and had obtained their consent by fraud, it was held that it had jurisdiction to examine the debtor, for the purpose of discovering the truth of the allegations and the existence of the property (*d*).

Trustees under such a deed are bound to give full information as to receipts and payments under the deed to creditors on their reasonable request, and may be summoned to court to do so (*e*).

It has been recently decided that sect. 153 of the Act of 1861 is by sect. 197 made to apply to trust deeds, as well as to bank-

(*x*) *Ex parte Spyer, Re Josephts*, 2 N. R. 560; 1 De Gex, J. & S. 318. See under former law, *Kingsford v. Swinford*, 4 Drew. 705.

(*y*) *Re Trebilco*, 13 W. R. 391; *Anon.*, 6 L. T., N. S. 511.

(*z*) *Re Henley, Thurgood & Co.*, 11 W. R. 1021.

(*a*) *Re Roberts*, 11 W. R. 552.

(*b*) *Ex parte Gibbons*, 34 L. J., Bcy. 39; 13 W. R. 1001; *Ex parte Turner*, 12 L. T., N. S. 770.

(*c*) *Re Lowden's Settlement*, 10 L. T., N. S. 261.

(*d*) *Re M—*, 8 L. T., N. S. 767.

(*e*) *Ex parte White*, 13 L. T., N. S. 24.

ruptcies; and that, therefore, the commissioner may under it assess damages for breach of contract (*f*).

breach of contract may be assessed.

Where an inspectorship deed has been duly registered under sect. 192 of the Act of 1861, and a non-assenting creditor has sued out a trader debtor summons against the debtor, the court has no power, in the exercise of its discretion under sect. 79 of the Act of 1849, to require the debtor to enter into a bond with sureties for payment of a sum of money, in the event of the action being successful, where the result of such an order would be to take the administration of the estate out of the inspectorship, and cause it to be administered in bankruptcy (*g*).

By sect. 198 of the Act of 1861, after notice of the filing and registration of such deed has been given as aforesaid, no execution, sequestration or other process against the debtor's property in respect of any debt, and no process against his person in respect of any debt, other than such process by writ or warrant as may be had against a debtor about to depart out of England, shall be available to any creditor or claimant, without leave of the court; and a certificate of the filing and registration of such deed under the hand of the chief registrar and the seal of the court shall be available to the debtor for all purposes as a protection in bankruptcy.

Protection to debtor after notice, &c. of filing of deed.

Certificate of filing, &c.

It would seem, however, that under this section the memorandum of registration only protects against a new arrest, and not against a detainer on a former arrest (*h*). The memorandum of registration is simply invalid unless the deed is good within the 192nd section (*i*).

Memorandum of registration no protection against detainer on former arrest.

Under the arrangement clauses in the Act of 1849, protection was granted to the debtor, but this protection was by virtue of a specific enactment and had no reference to a protection given in bankruptcy under the 112th section or the 162nd section; the authorities are, however, still serviceable with regard to the interpretation of the earlier part of this section as to the meaning of process, though not as to the effect of "protection." It was after some difference of opinion determined, that notwithstanding that no process could be had against an arranging debtor, yet proceedings might be prosecuted to bring about an act of bankruptcy by him under a trader debtor summons (*j*). Thus also, since the Act

Protection to debtor under arrangement clauses in Act of 1849.

But act of bankruptcy might have been brought about under trader debtor summons.

(*f*) *Re Penton*, Law Rep. Ch. Appeals, 1, p. 158.

(*g*) *Re Watson*, 14 L. T., N. S. 243.

(*h*) *Ex parte Johnson*, 10 L. T., N. S. 848.

(*i*) *Ibid*.

(*j*) *Ex parte Walker*, 6 De Gex, M. & G. 752; 24 L. J., Bcy. 26; 2 Bcy. & In. 145; *Re Dobson*, 8 Ir. Ch. 388; *Ex parte Arnold*, 3 De Gex & J. 473. See also *Re*

CHAP. XX.

After notice of arrangement, creditor petitioning goes on at his own risk.

"Process" is that of execution.

Fluester v. M'Lennan.

Execution by writ, attachment, &c.

Whether imprisonment

of 1861, a trader debtor summons, taken out previously to the registration of a deed within the 192nd section, was allowed, notwithstanding that it was not returnable until after the deed was registered (*k*). But if, after notice of arrangement, the creditor goes on to petition for adjudication, he goes on at his own risk, and he would under the old law, and will still (*l*) in such circumstances, under the present, have to pay the costs of his petition, which will be dismissed, if the deed becomes valid; he would formerly have had to pay the costs of annulling the adjudication (*m*).

The process meant by the old act, and it seems by the new also, is process of execution. Traders in partnership petitioned for arrangement on the 19th of December, 1859, and on the same day obtained an order protecting person and property from process, which order was extended and confirmed till the 15th of July: all the requirements of the arrangement clauses in the Act of 1849 were duly observed, and it was agreed that the partners should retain possession of their property in order to realize it, and pay the creditors a composition by instalments; part of the property consisted of leaseholds, which, since the date of the order for protection, had been sold, but the purchaser refused to complete in consequence of the plaintiff having recovered judgment and registered it against the partners, and it was held that such judgment was not process from which protection was given (*n*).

So the court of common law has refused to stay an *action* on a judgment brought after the debtor had obtained protection under those clauses (*o*).

But the word "process" includes all process of execution, whether by writ of execution or by attachment or otherwise. So execution by *fi. fa.* against the goods of a debtor after an order for protection, obtained under the 211th section of the Act of 1849, was irregular and void, and it was held that the execution creditor could take nothing by his execution, however the proceedings in bankruptcy might end (*p*). But it is still a matter of doubt whether imprisonment for non-payment of a judgment debt under

Muddiman, 28 L. T. 222; *Ex parte Waring*, 31 L. T. 27; *Re Minnus*, 31 L. T. 156; *Re a Trader Debtor Summons*, 32 L. T. 135; *Re Scotts*, 32 L. T. 42; *Anon.*, 7 Ir. Ch. 293; *Re Wallace*, ib. 494; *Ex parte Hills*, 32 L. T. 213; *Ex parte Treherne*, 6 Jur., N. S. 1317.

(*k*) *Re —*, 2 N. R. 17.

(*l*) *Re M'Turk*, 12 W. R. 1094.

(*m*) *Ex parte Arnold*, 3 De Gex & J. 473.

(*n*) *Fluester v. M'Lennan*, 29 L. J., C. P. 237; 6 Jur., N. S. 1375; 2 L. T., N. S. 243.

(*o*) *Naylor v. Mortimore*, 10 C. B., N. S. 566.

(*p*) *Williams v. Dray*, 29 L. J., Q. B. 86; 6 Jur., N. S. 532.

20*l.* by virtue of the Small Debts' Act, 8 & 9 Vict. c. 127, be or be not "process" within the meaning of this clause, and decisions have been pronounced both ways (*q*). On a motion to discharge a rule *nisi* for an attachment for non-payment of money, due on an order at *nisi prius*, on the grounds that a deed had been registered under the 192nd section, it was, though the rule was made absolute, ordered that the attachment should not issue without leave of the Court of Bankruptcy to the plaintiff, to make it available (*r*).

under "Small Debts' Act," process within sect. 198, *quære*. Attachment ordered not to issue without leave of Court of Bankruptcy.

As under the 198th clause, as well as under the 197th, the court has been held to mean the court which would, if the debtor were a bankrupt on his own petition, have jurisdiction (*s*), this seems to be the true order to make, at least, that is to say, when it is made clear that the deed, whose protection is set up, is a valid deed within the 192nd section. In some cases indeed this may be a question in issue, and then before such a condition can be annexed to the order granting the attachment, a preliminary inquiry may be ordered.

Thus, in *Maginn v. Coles* (*t*), where a motion was made in a court of law to stay execution, and the validity of the deed, on which the motion was grounded, was disputed, the court directed a reference to the master to report on the validity of the deed, and the sheriff, who had seized under a *fi. fa.*, was directed to sell and bring the money into court, unless within a week the execution should be paid out. These cases corroborate what will presently be shown to be the preferable view of the law, that the court, which orders execution, is the proper court to order its withdrawal, although the Court of Bankruptcy is the court whose leave should be obtained for the issue of execution under this section (*u*).

Maginn v. Coles.

Reference to report on validity of deed.

It will be seen that by this section it is enacted that the certificate of registration is to be available to the debtor for all purposes as a protection in bankruptcy.

Certificate a protection in bankruptcy for all purposes.

We have thus to consider the effect of a protection in bankruptcy, and for this purpose it might be sufficient to refer to the writer's remarks, *supra*, pp. 905 *et seq.*, but for convenience of reference, in connexion with the subject of deeds of arrangement, they are here recapitulated.

(*q*) *Gwillim v. Norris*, 11 L. T., N. S. 575; contra, *Ex parte Lay*, *Re Wollams*, 11 L. T., N. S. 720.

(*r*) *Welch v. Buck*, 31 L. J., Q. B. 263; 10 W. R. 714; sub nomine *Welsh v. Butt*.

(*s*) *Re Humphrey*, 13 W. R. 233.

(*t*) 13 W. R. 350. See also *Leigh v. Pendlebury*, 33 L. J., C. P. 172.

(*u*) *Skilton v. Symons*, 13 W. R. 409.

CHAP. XX.

Under sect.
112 of the Act
of 1849, bank-
rupt to be free
from arrest in
coming to
surrender, &c.

Not available
against subse-
quent creditors.

If arrested, to
be discharged
on producing
protection.

Remedies for
illegal deten-
tion, cumula-
tive.

To what
arrests protec-
tion extends.

By sect. 112 of the Bankrupt Law Consolidation Act, 1849, 12 & 13 Vict. c. 106, it is provided, that if a bankrupt be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment on the part of any creditor in coming to surrender, and after such surrender during the time by the act limited for such surrender, and for such further time as shall be allowed him for finishing his examination, until his certificate be allowed by the court, as the court shall from time to time by endorsement on the summons of such bankrupt think fit to appoint. It has, however, been lately decided (*v*), and the decision has been affirmed on appeal (*w*), that this protection is only available against creditors under the particular bankruptcy, and is not so against those claiming for debts accrued subsequently to the bankruptcy, on the ground that the word "creditor" in the Bankruptcy Acts applies only to creditors who are such at the time of the bankruptcy, and who have a right to come in and prove their debts under it.

And by sect. 113, if any bankrupt shall be arrested for debt, or on any escape warrant in coming to surrender, or shall after his surrender and while protected by order of the court, be so arrested, he shall, on producing such protection order to the officer, who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such protection order to him, except so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at Westminster in the name of such bankrupt, with full costs of suit.

The remedy here given for an illegal detention is cumulative, and does not take away the debtor's remedy at common law for a false and malicious arrest, if there be a case for it (*x*); nor, as it would seem, is the sum mentioned, a measure of damages upon such an action; at the same time the mere fact, that the creditor knows that the debtor has obtained protection, will not in itself be sufficient evidence of want of probable cause, so as to make the creditor liable for a malicious arrest. The protection from arrest in bankruptcy under these sections extends to all arrests by creditors,

(*v*) *Re Poland*, 14 W. R. 599.

(*w*) *S. C.*, on appeal, Law Rep. 1 Ch.

Appeals, p. 356.

(*x*) *Phillips v. Naylor*, 3 H. & N. 14;

27 L. J., Exch. 222.

whether for debts proveable under the bankruptcy or not (*y*), to arrests under attachments for non-payment of money (*z*), and even to arrests under extent at the suit of the crown (*a*), and to a *capias utlagatum* (*b*), and to an attachment issued for contempt in not paying money into the Insolvent Debtors' Court (*c*), and to a committal under the Insolvent Debtors' Act for non-payment of a balance due by an assignee under that act (*c*). It has been doubted, whether it extends to protect from arrest on a warrant for non-payment of rates, *e. g.* poor-rates; but there seems no reason why it should not. It extends in terms to a retaking on an escape warrant, but does not extend to retaking a prisoner for any escape by the Marshal of the Queen's Bench Prison without an escape warrant; what is said of a retaking on an escape warrant in the section, relating to a retaking by a creditor only (*d*).

It seems somewhat doubtful whether the 112th section will extend absolutely and unconditionally to entitle a bankrupt to be discharged from custody, who has been taken in discharge of his bail; the cases on the point are in conflict. In *Ex parte Gibbons* (*e*), it was held, that the bankrupt was not discharged by the then existing law, which, for this purpose, is closely analogous to the present, for, it was said, the bail are not creditors; and, besides, that, in contemplation of law, the defendant is in their custody from the moment they become bail for him, which, as at that time the court had not power to discharge from a legal custody already existing at the time of the bankrupt's surrender, would, of course, be fatal to its power to order his discharge in such a case: this last ground has, however, been since distinctly overruled by the case of *Ex parte Leigh* (*f*), which case seems inconsistent with the former on the principal question also. If it be necessary to decide between the two authorities it is submitted, that the latter lays down more truly the meaning and intention of the enactments, that if the debtor be held not in the custody of his bail, his arrest by his bail is still an arrest for debt on the original action, the bail only

Ex parte Gibbons.

Ex parte Leigh.

(*y*) *Darby v. Baugham*, 5 T. R. 209; *Ex parte Shepherd*, 29 L. T. 298. See also *Wallinger v. Gurney*, 11 C. B., N. S. 182; 31 L. J., C. P. 55.

(*z*) *Re M'Williams*, 1 Sch. & Lef. 169; *Ex parte Parker*, 3 Ves. 554; *Ex parte Jeyes*, 3 D. & Ch. 764; *Willie v. Green*, 1 D. & Ch. 410; *Re Rawlins*, 12 L. T., N. S. 57, where a bankrupt was, under the 112th section of the Act of 1849, discharged from custody on an attachment for non-payment of alimony.

(*a*) *Ex parte Russell*, 1 Rose, 278; 19 Ves. 163; *Ex parte Temple*, 2 Rose, 22; 2 V. & B. 391.

(*b*) *Ex parte Helsby*, 1 D. & Ch. 16; Mon. 355; on appeal, M. & Bl. 78; *Ex parte Metcalf*, 2 Bcy. & Ins. 3.

(*c*) *Ex parte Bury*, 7 Jur. 406; 3 M., D. & D. 309.

(*d*) See *Anderson v. Hampton*, 1 B. & Al. 308; *Ex parte Johnson*, 14 Ves. 36.

(*e*) 1 Atk. 238.

(*f*) 1 Gl. & J. 264.

CHAP. XX.

*Ex parte
Oldaker.*

*Ex parte Old-
aker consi-
dered.*

*Re Underwood,
Ex parte
Cornett.*

The court has
power (*semble*)
to release
bankrupt in
custody under
a *cap. ad resp.*

*Lloyd v. Har-
rison.*

acting in this view as agents for the plaintiff, and that it is thus an arrest from which the bankrupt is protected.

A trader debtor, being summoned on an affidavit of debt in the Court of Bankruptcy, entered into a bond with sureties, conditioned for payment of the debt, if recovered in an action at law, or for the surrender of the debtor in execution; the creditor recovered judgment, and a fiat issued on the petition of another creditor against the trader who obtained his protection under it, and then surrendered in discharge of his bail in the action: it was held, that the protection did not entitle the bankrupt to be released from the custody into which he had voluntarily surrendered himself, but that he must be left to his ordinary legal remedies (*g*). This case, however, turned much on its special circumstances; the debtor had already applied to Mr. Justice Patteson for his discharge, substantially on the same grounds as those on which the application to the Vice-Chancellor was based (*h*); the Vice-Chancellor held only, that he was not so clearly of opinion that the debtor was entitled to his release from custody as to order such release summarily. The ground of the decision, moreover, was the voluntary nature of the surrender, which could not be construed as an arrest, for the bail bond was not given on process in the action, but on summons to the Court of Bankruptcy, on which no arrest was possible.

From a recent case, however, on the other hand, it would seem that the Court of Bankruptcy has jurisdiction to order the release of a bankrupt, who is in custody under a writ of *capias* to hold to bail, and will, after the choice of assignees in a proper case, exercise its discretion, and order his release, conditional upon his giving sufficient bail to insure his attendance at the different sittings under the bankruptcy (*i*).

Under the 5 & 6 Vict. c. 122, it was held, that the sheriff was justified in immediately discharging a person arrested for debt, or on an escape warrant, on his producing the summons, as required by that statute, to the officer who arrested him, and on giving him a copy thereof. In such a case, the validity of the bankruptcy was immaterial; it was sufficient if the party was bankrupt *de facto*, though not *de jure* (*j*). It was much discussed in a late

(*g*) *Ex parte Oldaker*, De Gex, 591.

(*h*) See *Ex parte Smith*, 10 L. T., N. S. 551.

(*i*) *Re Underwood*, 14 L. T., N. S. 230;

see also *Ex parte Cornett*, *ibid.* (*n*).

(*j*) *Norton v. Walker*, 3 Exch. 480; 6 D. & L. 204; 18 L. J., Exch. 234.

case of *Lloyd v. Harrison* (*k*), whether the production of the certificate of registration of a deed, purporting to be registered within the 192nd section of the Act of 1861, was a good defence to an action for an escape against the sheriff who had, on such production and receiving a copy of it, discharged the debtor, the deed afterwards proving not to be valid within the 192nd section, and the case was decided in favour of the sheriff, the Chief Justice Cockburn dissenting; which decision has been lately affirmed on appeal.

Where a bankrupt, not being in custody at the time of his surrender, obtains his protection from arrest, he is protected also from all detainers lodged against him after an arrest in disregard of his protection (*l*), and this was so formerly also; but formerly it was held that, if he was in custody at the time of his surrender, he could not be discharged by the protection of the court from the arrest, or the subsequent detainers (*m*); but now, in a case of bankruptcy, under the express words of the 112th section of the Act of 1849, the court *may* in such case order the discharge of a bankrupt, except under particular circumstances as there mentioned; it is, however, altogether discretionary with the court, even in bankruptcy; and it seems very doubtful whether any discretion exists in any court to release from custody a debtor, who is in arrest, on his merely executing and registering a deed under the 192nd section. It is clear that the giving of the certificate of registration, being a merely ministerial act of the registrar, cannot of itself give a right to the debtor to his discharge in such a case, the discharge in bankruptcy being, in similar circumstances, only discretionary with the court, and the power to exercise such discretion being conferred only on the Court of Bankruptcy in particular circumstances defined by the statute; and indeed this, which would seem a legitimate conclusion from the old state of the law, and the statutory modifications introduced by the Acts of 1849 and 1861, has been thrown out by the court as its opinion in *Ex parte Johnson* (*n*).

Thus, also, it was held, under the former law, that an order for protection under the arrangement clauses of the Act of 1849, viz, under the 211th section, did not bar the right of a judgment creditor to proceed with and obtain the fruits of a *fi. fa.* levied by

Bankrupt protected from arrest is protected against all detainers lodged against him.

(*k*) 13 W. R. 602; S. C., on appeal, Law Rep., 1 Exch., May 9th, 1866.

(*l*) *Ex parte Hawkins*, 4 Ves. 691; *Ex parte Ross*, 1 Rose, 260.

(*m*) *Ex parte Goldie*, 2 Rose, 343; 1 Mer. 176.

(*n*) 10 L. T., N. S. 848. See also *Ex parte Chaundy*, 5 L. T., N. S. 526.

CHAP. XX.

seizure, but not completed by sale before the date of the order for protection (o).

Deed of assignment valid against a *fi. fa.* issued the same day as, but just after, debtor's execution of deed.

But, though not strictly belonging to the present discussion, it may here be remarked, that, under the Act of 1861, it has been held that a deed of assignment of all the debtor's property, executed in pursuance of a resolution of creditors and duly registered, was valid against a *fi. fa.* issued the same day as, but shortly after, the debtor's execution of the deed, and that such deed was not void against the execution creditor under the statute of Elizabeth (p).

Court's discretion to release from arrest, extends only to arrest on final process.

It may here also be mentioned, that it seems to have been fully decided that the discretion given to the Court of Bankruptcy to release bankrupts from arrest extends only to arrest on final process, and cannot be exercised in favour of a prisoner in custody under a judge's order on mesne process (q).

Protection under registration, analogous to that under sect. 162 of the Act of 1849.

The protection, however, afforded by the registration of a deed is in some respects more analogous to the protection given by sect. 162 of the Act of 1849, which provides that the bankrupt, if his examination be adjourned *sine die*, shall be free from arrest or imprisonment for such time as the commissioner shall, by endorsement on the summons, appoint. The only difference, which this makes, is, that this protection has been held not to be available against debts incurred after bankruptcy; as, if it were so available, a bankrupt whose examination was suspended *sine die* would be in a better position in this respect than one whose certificate had been allowed (r). The decision in this case, no doubt, furthers what was probably the intention of the legislature in giving to the commissioners the power of granting protection to a bankrupt, notwithstanding the adjournment *sine die* of his last examination; but it is difficult to reconcile it with the expressions of the statute, for in the 162nd section the words are the same as in the 112th, that "the bankrupt shall be free from arrest or imprisonment," and the 113th section manifestly applies to both sorts of protection. The rule set up by the decision in question, therefore, would be a desirable one if it had been so

(o) *Bottomley v. Heyward*, 7 H. & N. 562; 31 L. J., Exch. 500; 8 Jur., N. S. 1156; 10 W. R. 780. But see, as to the effect on the rights of an execution creditor in the parallel case of an adjudication on petition, *O'Brien v. Brodie*, Law Rep. 1 Ex. 302; 14 W. R. 840.

(p) *Evans v. Jones*, 11 L. T., N. S. 636. See also ante, p. 1034.

(q) *Ex parte Woodroffe*, 28 L. T. 37; *Ex parte Stuart, Re Waugh*, 9 Jur., N. S. 1303; 9 L. T., N. S. 466; *Re Dyer*, 12 W. R. 138; *Re Mare*, 11 W. R. 304; *Re Godoy*, 11 W. R. 988; *Re Monteiro*, 12 W. R. 671; *Re Ryder*, 6 L. T., N. S. 108.

(r) *Grace v. Bishop*, 11 Ex. 424; 25 L. J., Ex. 58.

enacted, but seems to be rather in the nature of legislative than judicial determination.

This much, however, seems reasonably clear, that the certificate of registration is not in itself a discharge of a prior arrest, or of a detainer lodged before the registration of the deed against a prisoner already in custody; indeed it remains in doubt whether any court can discharge the debtor from such an arrest or detainer, unless he becomes a bankrupt, when he may be discharged under the 112th section of the Act of 1849. There is besides, even if any court can release him, the further question, what court is the proper one to exercise such a discretion? and this consideration will more properly follow the discussion of the general question which is next investigated, viz., What is the proper court to order a debtor's release when arrested after having received protection?

Registration not a discharge of prior arrest or detainer.

Whether any court can discharge from such arrest, &c., except on bankruptcy of debtor, *quære*.

What court can order release of debtor arrested after protection granted.

It is undoubted that, as the procedure in bankruptcy was formerly constituted, a bankrupt having received protection, and having been afterwards arrested, was entitled to apply to the Lord Chancellor for his discharge from custody, serving his petition or notice of motion on the arresting or detaining creditors, and orders were accordingly frequently made for such discharge (s). If the creditors did not thereupon discharge the debtor, the order was extended to the sheriff or officer, and disobedience either by the creditors or the sheriff or officer was punishable as a contempt of the Great Seal. This practice arose under the very indefinite powers of the Great Seal in matters of bankruptcy, and seems to have continued while the Court of Review lasted, whose powers were granted by reference to the powers theretofore exercised in bankruptcy by the Great Seal. But this general jurisdiction of the Court of Bankruptcy was limited and statutably defined by the Acts of 1849 and 1861, and it is therefore necessary to see how far it extends in this matter under those acts.

He might formerly have applied to Lord Chancellor.

Course of proceeding in such case formerly.

This practice continued under Court of Review.

The sections defining the jurisdiction generally are the 6th and 12th sections of the Act of 1849, and the 1st of the Act of 1861. The 6th of the Act of 1849 and the 1st of the Act of 1861 merely declare that the court shall be a Court of Record, and exercise all the powers of the superior Courts of Law and Equity for the purposes of the acts, which seems to mean, for all purposes necessary to the administration of the law in bankruptcy. The 12th

Sections of Acts of 1849 and 1861 limiting jurisdiction of Court of Bankruptcy.

(s) *Anon.*, 1 Rose, 230. See *Ex parte Donlevy*, 7 Ves. 318; *Ex parte Kerney*, 1 Byne, 1 V. & B. 316; *Anon.*, 15 Ves. 1; *Atk.* 55.
Ex parte King, 7 Ves. 312; *Ex parte*

CHAP. XX.

Under sect. 12 of the Act of 1849, it extends to persons submitting to it.

Whether Court of Bankruptcy has power to discharge debtor arrested, while protected, *quære*. No ground for it, *ex necessitate rei*.

Statutory power of Court of Bankruptcy to grant protection limited to certain specified cases, *semble*.

section of the Act of 1849 defines the powers of the court in its primary jurisdiction, and limits them as follows:—It gives the court power to make orders in any matter of bankruptcy, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, &c., “and also in any matter of bankruptcy whatever, as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the court, and also in any application and in any other matter, whether in bankruptcy or not, where the court, by virtue of the act, has jurisdiction over the subject” of the application, except as otherwise by the act may be specially provided. Here the jurisdiction over persons other than the bankrupt or the assignees, in their character as such, is limited to persons appearing and submitting to the court; and the special words as to the power of the court in matters of certificate, which might affect other persons than creditors submitting, confirms the view that in all things, other than those strictly necessary for realizing and distributing the assets, the express or implied submission of a creditor is necessary to give the court jurisdiction over him. Thus it has been held, since the passing of the Act of 1849, that the court has no power to enjoin a creditor against proceeding at law, even though he may have proved his debt, and thus disentitled himself from prosecuting an action for it (*t*).

How stands it, then, with regard to the discharge of a prisoner? In such a case the execution or detaining creditor has never submitted to the court even by proving his debt, and if the court has any jurisdiction over him to order him to discharge the debtor, it can only be because such a jurisdiction is *necessary* for the administration of the law in bankruptcy, or is given expressly by the statute. Is it then necessary? It seems at least not more necessary than the power of giving a certificate, which power nevertheless it was deemed right to confer by express words as against creditors not submitting.

The statutory clauses with reference to protection have been already mentioned, and it has been noticed that where a bankrupt is in prison or in custody for debt at the time of obtaining his protection there is an express enactment that the court may, except in the cases therein mentioned, order his immediate release, either absolutely or upon such conditions as the court shall think fit. Now here is a power of discharging prisoners given to the Court

(†) *Ex parte Boucer*, Fonb. 157.

of Bankruptcy in express words, but under certain circumstances only. Under those circumstances the power is undeniable, but to those circumstances, it is submitted, the power is confined; indeed if it is extended to other circumstances, why confer it by express words under these in particular? Nor is there any thing arbitrary or capricious in giving such a power under these circumstances, while withholding it under any other. The reason seems plain: when the bankrupt already in prison is brought up to surrender and obtains a grant of protection, there is an obvious advantage in giving to the court which grants protection power also to make the consequential order necessary to give full effect to the protection which it has granted, and in not leaving one court the power to *make* the order for protection while requiring the aid of another to *give effect* to the order. This reason exists in no other case. It is to be assumed *primâ facie* that a debtor, having received the protection of the Court of Bankruptcy, will not afterwards be arrested in defiance of that protection; but if he be and require to make application to any court for his discharge, there is in such case no reason for sending him to the Court of Bankruptcy rather than to any other court. Nothing is saved in time or convenience by a resort to that court rather than to the court under whose process the debtor is in arrest; and the reason for giving a power of discharge to the Court of Bankruptcy in such a case no longer existing, the legislature would seem to have refrained and refrained wisely from giving such a power. It has given at least no such power in express words, the 113th section providing a penalty to be recovered against the officer who arrests a protected debtor, if he shall not immediately discharge him on the production of his protection, but providing nothing as to any other *means* of enforcing the discharge of the debtor; and it has been decided, that the Court of Bankruptcy has no power under the 112th section to order the release from custody of a prisoner who has neglected to obtain a renewal of his protection and has been arrested during the interval between the expiration of such order and the taking effect of his order of discharge; even though it may renew the order of protection on application; but such renewal of protection does not enure to discharge the arrest validly made in the meantime (*u*).

Court of Bankruptcy has no power to release debtor arrested after expiration of protection order and before discharge.

It is difficult on the mere weight of the authorities to arrive at

(*u*) *Re Kimberley*, 34 L. J., Bcy. 28; 13 W. R. 565, 641; affirmed on appeal, 13 W. R. 641; 12 L. T., N. S. 291.

CHAP. XX.

a definite conclusion as to what the law on this subject is, the cases apparently varying, although the weight of authority seems at length to tend towards a conclusion.

Cases in favour
of jurisdic-
tion of Court
of Bankruptcy.

In *Ex parte Windsor* (x), in *Re Burslem* (y), in *Re Browne* (z), in *Re Castleton* (a), and *Ex parte Godden* (b), the court expressed itself in favour of the jurisdiction of the Court of Bankruptcy, although it can hardly be said that in any of these cases, except, perhaps, *Re Browne*, the point was solemnly decided on argument. Under the old law indeed, in the case of *Plumer v. MacDonald* (c), Vice-Chancellor Knight Bruce had held that a person, arrested under an order of the Court of Chancery, while going to attend the Court of Bankruptcy on the hearing of a petition which he had filed there, ought to apply to the Court of Bankruptcy for his release from arrest, and his Honor sitting in Chancery refused an application by the prisoner for such release.

Case of *Plumer*
v. MacDonald
under former
law.

Plumer v.
MacDonald
considered.

This case, however, occurred while the Court of Bankruptcy retained the powers of the Great Seal under the old practice, and it is submitted that even then the case went too far, since the proposition, that under such circumstances the court, by virtue of whose process the arrest was made, had not at least concurrent jurisdiction with the court whose privilege was invaded, is one negatived by the rule of practice, reserved in most of the courts (d); it will be seen on reference to the cases cited below, that the courts of common law have not hesitated to exercise such a jurisdiction, and there seems no reason why the Court of Chancery should not do so.

Cases in favour
of jurisdiction
of court, out of
which process
issued, infring-
ing protection.

On the other hand, in *Re Harwood* (e), in *Penhall v. Littlejohns* (f), in *Ex parte Johnson* (g), in *Ex parte Daniels* (h), and in *Ex parte Smith* (i), the court expressed an opinion that the proper resort was to the court out of which process had issued, to restrain its own process, but the point does not in these cases either seem to have been definitely decided.

Supposed
analogy be-
tween protec-

It has been urged in favour of the jurisdiction of the Court of Bankruptcy, that the protection of a bankrupt is analogous to and

(x) 7 L. T., N. S. 535.

(y) 9 L. T., N. S. 352.

(z) 13 W. R. 926.

(a) 31 L. J., Bcy. 71.

(b) 1 De G., J. & S. 260; 32 L. J., Bcy. 37.

(c) 11 Jur. 899; 1 De G. & S. 232; *sub nom. Plomer v. M'Donough*.

(d) See *Penhall v. Littlejohns*, 1 N. R. 292; *Hayne v. Robertson*, 16 C. B. 554;

Shauvin v. Alexandre, 10 W. R. 248;

Leigh v. Pendlebury, 33 L. J., C. P. 172;

Stone v. Jellicoe, 12 W. R. 922.

(e) 7 L. T., N. S. 171.

(f) 1 N. R. 292.

(g) 10 L. T., N. S. 848.

(h) 10 L. T., N. S. 850.

(i) 10 L. T., N. S. 551; see also *Ex parte Kimberley*, 34 L. J., Bcy. 28; 13 W. R. 565, 641.

CHAP. XX.

has sprung out of the privilege extended by all courts to their suitors and witnesses, and that it is for the interests of justice, and is, in fact, a privilege of the Court of Bankruptcy, that the bankrupt should be enabled to attend its sittings and assist its officers in getting in his estate, and that the court has the power contended for, in furtherance of the objects of its constitution and in defence of its privilege. The answer to this is, that, as to attendance on the sittings of the court, it has undoubtedly the power to order a prisoner to be brought up before it, and that in any case the privilege cannot be put higher than the privilege with regard to a witness subpoenaed to attend a trial in a Court of Record, say, for instance, a Court of Quarter Sessions; yet a witness in such a case, arrested under the writ of a superior court, cannot be discharged *by the Court of Quarter Sessions (k)*, he must apply to the court, under whose process he was arrested or else take his remedy by *habeas corpus*.

tion of bankrupt and privilege of witnesses, &c.

On the whole, therefore, it would appear that, no particular court being pointed out by statute as the court to order a debtor's release, the ordinary courts of common resort should naturally and properly be presumed to be the courts to afford justice in each particular case. It may further be remarked, that if it so happened that the commissioner's order should turn out not a sufficient authority for the sheriff to discharge the prisoner, it does not seem clear how the sheriff could avoid the liability to an action for an escape at the suit of the creditor, inasmuch as the right to enjoin a creditor who has not proved from suing the sheriff for an escape is one which would seem rather beyond the jurisdiction of the Court of Bankruptcy, how far soever one may desire to stretch it; and in this view, it is submitted, that even if the jurisdiction should be thought to exist, the Court of Bankruptcy would act more wisely in refusing to exercise it.

Application for discharge to be to ordinary courts, *quære*.

In any case, it seems to be the more regular course in general,—where executing the process of one court would involve a contempt of another,—rather to apply to the court, ordering process, to vary its own order, than to make application to the court, whose privilege is invaded, to support its dignity by ordering a counter contempt of the court issuing the process, viz.,—by commanding the officers of that court to disobey its order. The last course leads to a most unseemly conflict of jurisdiction, and places the

Ordinary practice as to executing process.

(k) *Wilson v. Sheriffs of London*, Brownl. l. 1, p. 15; *Clerk v. Molyneux*, L. Raym.

100; 1 Lev. 159; 1 Siderf. 269; 1 Keb. 485.

CHAP. XX.

officers of the court in a very false position. On the other hand, if application be made on good grounds to the court which ordered the process, it will, without doubt, retract its own order; the prisoner will thus be set at large and the officers discharged from liability,—all the courts will be in harmony, and each be treated with due respect.

Court of Bankruptcy will not interfere with order of other court directing discharge.

Ex parte Smith.

It has been clearly decided, that even if the Court of Bankruptcy has concurrent jurisdiction with the court out of which process has issued, to order the discharge of a prisoner, it has, in any case, nothing in the nature of an appellate jurisdiction; and if application has already been made to a judge of the court, under whose process the prisoner is in arrest, the Court of Bankruptcy will not entertain an application for the same purpose (*l*). So, also, where a court of law had discharged a prisoner, on the ground of the registration of a deed, without directing investigation, though the deed was impeached, Mr. Commissioner Goulburn refused to allow the matter to be reopened (*m*); and subsequently, on application to the court of common law, a re-arrest was ordered, the deed having been found to be bad (*n*).

Semble, Court of Bankruptcy has no power to order discharge of debtor under arrest at date of order, except under sect. 112 of Act of 1849.

If, then, it be the case, that the Court of Bankruptcy ought not to order the discharge of a prisoner in arrest under the writ of a superior court, even in case of such arrest being made after he has obtained protection, it follows, *à fortiori*, that the Court of Bankruptcy ought not to order his discharge where he is already in arrest, unless in the special case of a bankrupt in arrest brought up to surrender, and then obtaining his protection under the special words of the 112th section of the Act of 1849. If any court has power to discharge from custody a prisoner already in arrest at the time of registering a deed under the 192nd section, the court under whose process he is in custody seems to be the proper court.

Courts have ordered discharge under deed containing release or covenant not to sue.

The better opinion seems to be, that such a power does exist in furtherance of the intent of the statute; and the courts have, in fact, ordered the discharge of prisoners where the deed contained a release (*o*) or covenant not to sue. This, however, is of course no guide in cases where there is no release or covenant not to sue, such as in the case of a deed in the form Schedule (D.) to the Act

(*l*) *Ex parte Smith*, 10 L. T., N. S. 551.

(*m*) *Ex parte Daniels*, 10 L. T., N. S. 850; *Ex parte Banfield*, 13 W. R. 998.

(*n*) *Daniels v. Jansen*, 10 L. T., N. S. 909.

(*o*) *Penhall v. Littlejohns*, 1 N. R. 292. See *Leigh v. Pendlebury*, 12 W. R. 468; 33 L. J., C. P. 172, where a rule *nisi* had been granted, although it was afterwards discharged on the deed proving bad.

of 1861, as it does not appear in the former cases, that the discharge of the debtor is not in the nature of an order on an *auditâ querelâ*, by reason that the release or the covenant may have become by force of the statute binding on dissentient creditors, and may have destroyed the debt or the remedy on the debt, for which the prisoner is in arrest.

But in an action for an arrest after the debtor had obtained protection by means of a deed registered under the 187th section, it was held a fatal omission, that there was in the declaration no allegation that the deed was, before action brought, duly registered under the section (*p*); and thus, it seems, that under that section, if the bankruptcy be annulled before the registration of the deed has been actually completed, but after the date of the order for its registration, the debtor has no protection in the interim. An attempt was made, since the Act of 1861, to extend the effect of the protection given by the registration of a deed under the 192nd section far beyond that given to it by the statute, for it was argued in one case, although indeed unsuccessfully, that the court ought to enjoin a dissenting creditor from proceeding by action after the registration of the deed (*q*).

Protection under deed within 187th section.

The certificate of registration is no evidence, or, at least, no conclusive evidence, that the deed is valid within the 192nd section (*r*); nor is any substantive proceeding necessary to vacate the registration before resisting the efficacy of the deed, which may be treated as a nullity by any dissentient creditor at his own risk; the certificate is a mere nullity if the deed be not good (*r*). If a debtor seek his release from custody under a certificate of registration, he must prove, by affidavit, that the deed has been duly executed and its conditions complied with; it is not enough that he tender himself for examination (*s*). It has before been remarked, that the registration to which efficacy is given under the 197th and following section is only the registration of a deed within the 192nd section (*t*).

Certificate of registration not conclusive of validity of deed under sect. 192.

Debtor to procure release must prove due execution of deed, &c.

(*p*) *Renwick v. Dale*, 8 L. T., N. S. 366.

(*q*) *Re Abbott*, 6 L. T., N. S. 195.

(*r*) *Ex parte Godden, Re Shettle*, 1 De G., J. & S. 260; 32 L. J., Bcy. 37; *Re Rawlings*, 1 De G., J. & S. 225; 32 L. J., Bcy. 27; *Ex parte Page*, 32 L. J., Bcy. 14; 1 De G., J. & S. 283; *Ex parte Watts*, 10 L. T., N. S. 74; *Ex parte Johnson*, 10 L. T., N. S. 848; *Ilderton v. Jewell*, 14 C. B., N. S. 665; 32 L. J., C. P. 256; 12

W. R. 530; 2 N. R. 324; *Re Rochefort*, 12 W. R. 318; *Ex parte Harris*, 9 L. T., N. S. 239.

(*s*) *Re Burslem*, 12 W. R. 89; 9 L. T., N. S. 352.

(*t*) See *Ex parte Morgan*, 1 De G., J. & S. 288; 11 W. R. 316; 1 N. R. 339; 32 L. J., Bcy. 15; 9 Jur., N. S. 559; *Re Bennett*, 5 L. T., N. S. 493; *Re Granger*, 5 L. T., N. S. 464; *Pearson v. Pearson*, Law Rep. 1 Ex. 308.

CHAP. XX.

Process may, notwithstanding certificate, issue in case of fraud, &c.

Ex parte Nelson, Re Ellis.

Notwithstanding the protection given by the certificate of registration, process may still issue with leave of the court, and this will always be granted on application, if it be shown that the deed was fraudulently obtained or concocted to keep within the words whilst evading the spirit of the statute (*u*). In a late case a composition of five shillings in the pound was offered and refused; a deed of assignment was then executed, and the estate, by the accounts of the trustee, showed only two shillings and two-pence in the pound. Before registration four creditors received five shillings in the pound. On application by a dissenting creditor for leave to issue process it was granted; for the four might have been fraudulently induced to assent by the payment of the five shillings (*v*). But the court will not grant such leave if there has been unreasonable delay, nor will it do so where the creditor has taken out process, without leave, and on its execution the debtor has been released by a common law judge (*x*).

Description of debtor in deed to be full.

The description of a debtor in one of these deeds should be as full and complete as in bankruptcy; but if nobody has been misled by the description the court will not, on the ground of misdescription alone, allow execution to issue at the suit of a dissenting creditor (*y*).

Leave to issue execution refused.

Where a debtor had arranged under a deed of this kind, under the 192nd section, to set aside 800*l.* per annum out of a salary of 1,200*l.*, the court refused leave to a dissenting creditor to issue execution (*z*). It would seem that fraud, or the like, should alone induce the court to allow process to issue; thus, where permission to issue execution, notwithstanding the deed, was applied for, on the ground that the deed was invalid for inequality, as the composition on debts under 15*l.* was to be paid in one payment, and on debts of 15*l.* and upwards in three instalments, it was refused, no fraud being proved and the court holding, that if the deed was invalid, execution might be taken without leave at the creditors' peril (*a*).

Instances.

Leave granted.

In some cases, however, the invalidity or informality of a deed by reason of noncompliance with the conditions of the 192nd section, express or implied, has been deemed sufficient reason for allowing process to issue notwithstanding the deed (*b*). So, also, where a

(*u*) *Ex parte Morrison*, 12 W. R. 1093.

(*v*) *Ex parte Nelson, Re Ellis*, 13 W. R. 760.

(*x*) *Ex parte Banfield, Re Ellis*, 13 W. R. 998.

(*y*) *Re Wheeler*, 11 W. R. 988.

(*z*) *Anon.*, 11 W. R. 602.

(*a*) *Ex parte Hart, Re Pound*, 13 W. R. 391.

(*b*) *Ex parte Roper*, 13 W. R. 526; *Re Beal*, 12 L. T., N. S. 550.

deed was valid within the 192nd section, leave was granted to a creditor, who was not bound by the deed, as having at the date of its registration no proveable debt, but whose name had nevertheless been inserted by the debtor in the schedule annexed to the deed, to issue process notwithstanding the deed (c). If there be a conflict of evidence as to whether the deed be good or not upon the facts, leave should be granted to issue execution, and the question may then be tried on the motion to discharge the execution (d). Applications under this section must be supported by affidavit under rule 17 of General Order, 19th October, 1852, and it is not competent on such an application for leave to issue process to go into an inquiry as to the validity of the deed for the first time (e).

Mode of proceeding where conflict as to facts.

Applications under sect. 192, how to be supported.

By the 199th section, in case any petition shall be presented for an adjudication in bankruptcy against a debtor after his execution of such deed or instrument as is hereinbefore described, and pending the time allowed for the registration of such deed or instrument, all proceedings under such petition may be stayed, if the court shall think fit; and in case such deed or instrument shall be duly registered as aforesaid, the petition shall be dismissed.

Power of court to stay adjudication during time allowed for registration.

This section extends the prohibition of process contained in the former section, even to process of bankruptcy, and it has been held to extend not only to prevent a bankruptcy at the instance of a creditor, but to bar a petition by the debtor against himself (f); and though the terms of the section only direct the stay of proceedings in the first instance, and the subsequent dismissal of the petition, the meaning of the section has been carried even beyond its words, and an adjudication actually pronounced, without notice being given to the court of the deed, was annulled on the complete registration of the deed (f). If application be made to stay proceedings before adjudication, no one has a right to be heard on the question except the bankrupt and the petitioning creditor (g); and the court will in general stay adjudication pending the time for registration, if satisfied that the deed will probably be validly registered under the 192nd section (h).

Sect. 199 extends to stay petition of debtor.

Fiat annulled under sect. 199.

But the court, before annulling an adjudication made, has allowed the bankruptcy to proceed to a choice of assignees, at least in

But where adjudication made, court will

(c) *Ex parte Oastler and Palmer*, 13 W. R. 525; *Ex parte M' Lennan*, 13 W. R. 1046. See *Re a Trust Deed*, 12 L. T., N. S. 640, where it seems that the deed was good but not binding, by reason of failure by the debtor to comply with its provisions.

(d) *Ex parte Gordon*, 12 L. T., N. S. 754.

(e) *Re Cardoza*, 14 W. R. 15.

(f) *Re Clarke*, 11 W. R. 878; 2 N. R. 418.

(g) *Re Wyatt*, 12 W. R. 640.

(h) *Re Lambert*, 13 W. R. 235.

CHAP. XX.

allow choice
of assignees.

Where deed
appears invalid
within sect.
192, court will
not stay pro-
ceedings.

In case of
fraud, assent-
ing creditor
may petition
for adjudica-
tion.

Rules of equity
apply to deeds,
where statutes
silent.

But under the
Act of 1861 no
costs allowed
of trustees
under invalid
deed;

the absence of very clear and convincing evidence that the 192nd section has been properly complied with; for until assignees have been chosen, the creditors, whose interest it is to support the adjudication, are not properly before the court (*i*). The court having on the registration of the deed, as it seems, *prima facie* jurisdiction, at least as against the persons executing, it may appoint a private sitting to examine whether the deed is really valid within the 192nd section, the trustees of the deed having the carriage of the proceedings (*k*); and where it appeared plainly that the deed could not be supported under the 192nd section, the court refused to stay the proceedings in the bankruptcy pending the time for registration (*l*). A debtor, seeking to stay proceedings in bankruptcy by these means, should furnish the names and addresses of his creditors, in order that it may appear that the conditions have been properly complied with (*m*).

Where on the examination it appeared that the deed was invalid under these sections, and was fraudulently registered, a creditor was allowed to petition for adjudication, though he had executed the deed, and the debtor was subsequently adjudicated a bankrupt (*n*). On the return of a judgment debtor summons, a deed set up may be impeached as invalid, and, if found so, the debtor may be adjudicated (*o*).

Of course, where the bankrupt statutes do not expressly intervene, the general principles of equity will be carried out in relation to deeds of arrangement (*p*). So where, under the Act of 1849, the debtor was made bankrupt after the execution of an assignment for the benefit of creditors, the trustees of the assignment were held entitled to be repaid out of the estate expenses *bonâ fide* incurred under the trusts of the deed, though no benefit had been derived to the estate from the expenses incurred (*q*).

The case just cited, however, was decided under the 185th section of the Act of 1849, and it has since been held that the court cannot under the bankruptcy allow the costs of trustees under an inefficient deed (*r*). It seems that this last view of the law is the sound one,—the trustees take the assets with notice that an act of bankruptcy has been committed, and as against

(*i*) *Re Rochefort*, 12 W. R. 318.

(*k*) *Ex parte Levoi*, 5 L. T., N. S. 466.

(*l*) *Re T. W.*, 7 L. T., N. S. 475.

(*m*) *Ex parte Harris*, 9 L. T., N. S. 239.

(*n*) *Re Cole*, 11 W. R. 989.

(*o*) *Ex parte Hodgson*, 13 L. T., N. S. 71.

(*p*) See *Chaplin v. Young*, 11 L. T., N. S. 10.

(*q*) *Ex parte Tomlinson, Re Boyce*, 30 L. J., Bcy. 41; 7 Jur., N. S. 982. See also *Ex parte Shaw*, De G. 242.

(*r*) *Re Comber*, 12 W. R. 767; *Smith v. Dresser*, 14 W. R. 469.

the assignees are mere trespassers (s). In some cases, nevertheless, such costs have still been allowed out of assets on an adjudication under special circumstances, the application not having been opposed (t). The converse of the proposition determined in *Re Comber* has also been held, that the costs of a petitioning creditor whose petition was filed pending the time for registering a deed under the 192nd section, and thereupon stayed and afterwards dismissed under the 199th section, could not be ordered to be paid by the trustees of the deed (u).

nor of creditor, if petition for adjudication dismissed under sect. 199.

Creditors who had executed a deed of arrangement were, under the Act of 1849, only concerned in the deed quoad the amount of debt for which they had executed, and therefore a call made for the purpose of indemnifying trustees could only be made on one of the creditors in the proportion of the debts for which he had subscribed, although he had been paid in full another debt as a consideration for withdrawing from proceedings taken by him in bankruptcy (x). It is not easy to say how far the 197th section of the Act of 1861 may interfere with this rule.

Under Act of 1849 creditors affected by deed only quoad specified debts.

Cheeseborough v. Wright.

As to effect of sect. 197 of the Act of 1861, *quære.*

It remains only to make a few general remarks as to deeds under these sections.

First. The deeds which are open to least difficulty and objection are obviously those which most closely follow the law of bankruptcy itself, viz., deeds by which the debtor assigns all his property for the benefit of his creditors and takes a release from them, and such deeds are the safest to rely on in practice. It should, however, never be neglected with reference to such deeds, where real or leasehold estate is concerned, to comply with the provisions of the 68th section of the Act of 1849, in order that the trustees may be able to make title to a purchaser after the lapse of three months.

Deeds following law of bankruptcy safest in practice.

Secondly. Deeds of money composition offer more difficulties, and can hardly be positively relied on in the face of some of the decisions on the subject: they are, however, in very common use, and some have been held valid; if not too complicated they seem, practically, to be tolerably safe, though he would be a bold adviser who should positively guarantee any of them.

Deeds of composition.

Thirdly. Deeds of inspection seem the least advisable of all.

Deeds of inspection.

(s) See *Ex parte Hardinge, Re Plumstead Water Works*, 32 L. J., Ch. 145; 11 W. R. 99; 1 N. R. 40; *Ex parte Dean*, 2 M., D. & D. 438.

821.

(t) *Ex parte Cooke*, 10 L. T., N. S.

(u) *Ex parte Jones, Re M' Turk*, 12 W. R. 1094.

(x) *Cheeseborough v. Wright*, 10 W. R. 47.

CHAP. XX.

The objection to which they lie open in respect of the seventh clause of the 192nd section has already been noticed (*y*), and as the same object can generally be obtained by a well-contrived deed of assignment, the present writer does not recommend their use in any case. The parties, however, themselves are often most anxious to make use of such an arrangement, and as some have passed muster (*z*), recourse will still, probably, be occasionally had to them.

It is lastly to be borne in mind, with regard to deeds of the description last referred to, that, where the business has been a partnership concern, there is this additional objection to a winding up by inspectorship, that it must almost of necessity be a proceeding for the benefit of the joint creditors solely or at least primarily. If this be so, and it is difficult to suggest any sound argument to show that it is not so, then the deed is open to the objection that it is not for the *equal* benefit of all the creditors, an objection which, as has already been shown, (*supra*, p. 1004,) is absolutely fatal to its valid registration under the 192nd section, and to its consequent effect in binding any dissenting or non-assenting creditor.

In connexion with the subject of this chapter the following further decisions are of importance, some of which have been only recently pronounced.

Effect on jurisdiction of court of resolution suspending proceedings.

With reference to the effect on the jurisdiction of the Court of Bankruptcy of a resolution of creditors under the 110th section of the Act of 1861, suspending proceedings in bankruptcy, the reader is referred to a late decision by one of the learned commissioners, the result of which must, it is conceived, with all due deference to the opinion to the contrary of the learned commissioner, affect to some extent the application of *Ex parte Wood, Re Carter*. (See *as to this, supra*, pp. 988, 989.) In *Ex parte Thomas, Re Thomas* (*a*), which came before Mr. Commissioner Winslow, shortly after the judgment on appeal in *Re Carter* had been pronounced, his Honor held that the Court of Bankruptcy has power, upon being satisfied that all the creditors who have proved or claimed under a bankruptcy have received the composition which they have agreed to accept, to annul the bankruptcy, notwithstanding that the

(*y*) See ante, pp. 1019, 1020.

(*z*) *Corner v. Sweet*, 14 W. R. 584.

(*a*) 14 W. R. 740.

proceedings in bankruptcy have been suspended by a resolution under the 110th section of the Act of 1861, his Honor being of opinion that there was no intention on the part of the legislature to confer on creditors a power to suspend the bankruptcy for a longer period than should be requisite for the purpose of obtaining payment of their debts; and his Honor, at the same time, stated that he did not conceive that his decision in the principal case in any way conflicted with that of *Re Carter*, or any other case which determined that the court lost its jurisdiction to make certain orders relative to the administration of the estate during the period of suspension.

On the subject of inequality in deeds of arrangement, the reader's attention is directed to the case of *Ex parte Wilson, Re Baynham* (b), in addition to those cited *supra*, pp. 1004 *et seq.*

Inequality.

On the subject of unreasonable conditions, (*supra*, pp. 1013 *et seq.*,) see *Brooks v. Jennings* (c), in which it has been held, that a composition deed under the 192nd section of the Act of 1861 is not unreasonable, because the day appointed for payment of the composition occurs before the expiration of the twenty-eight days allowed by the act for the registration of the deed, although no trustee is appointed by the deed.

Unreasonable conditions.

With reference to the same subject (unreasonableness), see *Coles v. Turner* (d), on appeal, reversing the decision of the Common Pleas (see *supra*, p. 1017, n. (i)), and declaring that there was nothing unreasonable in a provision in a deed of assignment under the Act of 1861, sect. 192, giving power to the trustee named in the deed, to require persons claiming to be creditors to verify their debts or claims "by statutory declaration proved before the commissioners of bankruptcy, or otherwise as the said trustee might think fit." But in a later case (e) it has been held to be unreasonable to provide in a deed of assignment under sect. 192, that any creditor shall, when required by the trustees of the deed, verify his debt by solemn declaration, and in default forfeit all benefit under the deed.

It has been held in a late case (f), that the affidavit of the debtor, required under sect. 192 of the Act of 1861, upon the registration of a deed within that section, may be dispensed with under special circumstances. (See in connexion with this, *supra*, p. 1019.)

Debtor's affidavit for registration of deed under sect. 192.

In *Ex parte Redway* (g) it was decided that where a debtor has

(b) 14 W. R. 543.

(c) 14 W. R. 440.

(d) Law Rep. 1 C. P. (from Exch. Ch.) 373.

(e) *Giddings v. Penning*, 14 L. T., N. S. 667.

(f) *Re Trump*, 14 W. R. 494.

(g) 14 W. R. 664.

CHAP. XX.

executed, under sect. 192 of the Act of 1861, a trust deed for the benefit of his creditors, a non-assenting creditor is entitled, under sect 197, to examine him before the commissioner, without defining the object of the examination.

Composition
deed under
sect. 185.

In *Ex parte Maddison* (*h*) a deed of composition which had been executed under the 185th section, between the debtor of the one part, and the creditors who should execute on behalf of themselves and all other the creditors of the debtor of the other part, was held to be open to objection on the ground that the creditors, who were not parties, had no right of action thereunder, but the deed in question was clearly bad on another ground of inequality.

Composition
deed executed
after adjudica-
tion invalid.

In *Ex parte Woodall, Re Woodall* (*i*), it has been held by the Lords Justices on appeal, affirming a decision of a district commissioner, that a composition deed is invalid, although the requisite assents to it have been obtained, if executed after adjudication of the debtor, even though the adjudication has been pronounced on his own petition, and no statement has been filed under the 93rd section of the Act of 1861.

The decision in *Re Vizard's Trusts* (*see supra*, p. 1027) has been upheld on appeal (*k*).

(*h*) 14 W. R. 501.

(*k*) Law Rep. 2 Eq., July 14, 1866.

(*i*) Law Rep. 2 Eq., July 13, 1866.

CHAPTER XXI.

1. COSTS.

By section 114 of the Act of 1849, the petitioning creditor in the first instance bears his own costs of the proceedings down to the choice of assignees, and the court, at or after the sitting for such choice, makes order for the payment of such costs out of the bankrupt's estate in the course of priority settled by General Order, and this principle has been extended to the case where a debtor petitions against himself. Where the petition is *bonâ fide* and for the benefit of creditors, the costs up to the choice of assignees are allowed out of the estate (a).

CHAP. XXI.

Petitioning creditor bears his own costs down to choice of assignees, when court orders payment out of estate. So of debtor petitioning against himself.

The General Order was contained in rule 114 of the Order of the 19th of October, 1852, and provided that after payment or retainer out of the estate of the bankrupt of all monies duly paid by the official assignee, the per-centage on the gross produce of the estate from time to time, payable to the credit of "The Chief Registrar's Account," and afterwards the per-centage payable to the official assignee in respect of realizing the property, the costs of the petitioner of filing and prosecuting his petition, until the choice of assignees by the creditors, shall be paid as follows: first, the costs and charges of the messenger and broker acting under the petition to the time of the choice of assignees, and then the costs and charges of the solicitor acting in the matter of the petition until the said time.

Order of payment out of estate of costs and expenses of official assignee, &c. G. O., 19th October, 1852, rule 114.

The per-centage payable to the Chief Registrar's Account no longer exists, (Act of 1861, sect. 38.) The official assignees' per-centage was first fixed by the 130th rule of the Order of the 19th of October, 1852, and confirmed by the Order of the 3rd of February, 1855; it was in some respects varied by the Order of the 19th of June, 1856, which order was re-enacted by the Order of the 12th of October, 1861, but the official assignees do not now retain this or any other fees by way of remuneration, but are paid by salary, (sect. 31 of the Act of 1861.) (See Appendix, Order as to Fees and Costs.)

Official assignees now paid by salary.

(a) *Ex parte Scott, Re Gilliam*, 13 W. R. 88; *Re Shaw*, 13 W. R. 872; *Re Wheatley*, 14 W. R. 290.

CHAP. XXI.

What costs
petitioning
creditor will be
allowed besides
those in G. O.

Costs of soli-
citor payable,
where no
assets, by per-
son employing
him to petition.

Costs of soli-
citor out of
estate refused,
where fraud
on his part.

By sect. 213 of
the Act of
1861, any
court acting
under Act may
award costs.

Order for, to
bind lands as
to purchasers,
&c., must be
registered and
re-registered.

In addition to the costs mentioned in the order, the petitioning creditor will be entitled to be allowed, out of the bankrupt's estate, costs incurred by him in successfully resisting a petition to annul the bankruptcy (*b*), or a sum paid to a creditor to render him a competent witness to support the adjudication (*c*). But the party who employs the solicitor to petition for adjudication, though he is not the petitioning creditor, is liable to the solicitor for the costs up to the choice of the assignees, where no effects are realized under the bankruptcy (*d*). Where a solicitor persuaded a party to sue out a fiat as petitioning creditor (who was afterwards chosen assignee), upon an invalid act of bankruptcy, which was concerted between the solicitor and the bankrupt, and there did not appear any other act of bankruptcy to support the fiat, the court refused to make an order on the assignee to pay the solicitor's bill of costs up to the choice of the assignees (*e*).

The general rule in taxing the petitioning creditor's costs is to allow one attendance of the solicitor for opening the petition, but if without any default more attendances are required, they will be allowed on taxation (*f*).

By section 213 of the Act of 1861, substituted for the 249th section of the Act of 1849, *any court acting under the act* may award such costs as may seem just in any matter before it, and all costs so awarded shall be recoverable in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered, and the like remedies may be had upon an order of such court for costs, as upon a rule of any of the said superior courts for costs, but the order for costs, in order to bind lands as against purchasers, mortgagees or creditors, must be registered, and if necessary, re-registered under the 23 & 24 Vict. c. 38. It is to be remarked, that the act in question, 23 & 24 Vict. c. 38, makes no provision for registering or re-registering judgments, except as against heirs and executors; it does provide for the registration of writs of execution, and requires such registration in order to bind purchasers for value, even with notice, or mortgagees, but this can hardly be what is meant, for there is no such thing as the re-registration of a writ of execution: happily the restrictive clause, as to the effect of such an order in binding lands, seems unnecessary, due regard being had to the law relating

(*b*) *Ex parte Bottomley*, 5 Mad. 91.

(*c*) *Ex parte Forth*, 2 Mon. & A. 381.

(*d*) *Pocock v. Russell*, 4 Car. & P. 14;
1 Moo. & M. 357.

(*e*) *Ex parte Woodward*, 2 M., D. & D.
249.

(*f*) *Ex parte Lawrence*, 30 L. T. 139.

to judgments in general, for it seems impossible to put any rational construction upon this part of the section as it stands.

Under the 249th section of the Act of 1849, it was doubted whether the power there given to recover upon an order for costs was not limited to an order of the commissioner's court (*g*). There seems no room for doubt that no such limit exists under the later enactment, and indeed the court has actually made order that one respondent should pay the costs of another which, but for the large powers of the section, would probably be beyond the powers of a court (*h*). The costs of proving a debt are in general payable by the person proving (*i*).

Under sect. 213, court has ordered payment by one respondent of costs of another. Costs of proof payable by person proving.

Before the Act of 1861, it was held that, as the goods of the bankrupt were in the care of the official assignee, the messenger was considered as his agent, and therefore the creditors' assignees were not liable to the messenger for his bill, unless by contract (*j*); but this principle seems no longer applicable, for by the 12th rule of the Orders of the 12th of October, 1861, although the messenger acts under the directions of the official assignee until the choice of assignees, yet after the appointment of the creditors' assignees the messenger is directed to act under their instructions in keeping or discontinuing possession: and by a late case it has been decided that the petitioning creditor is liable at law, without any express contract, for the fees and costs of the messenger down to the time of the appointment of the creditors' assignee, after which it is matter of evidence whether anything has been done from which the inference may be drawn that the messenger has been acting by the orders of the creditors' assignee (*k*).

Before the Act of 1861, the creditors' assignees not liable to the messenger for his bill.

Now by 12th rule, G. O., 12th October, 1861, he acts under creditors' assignees.

Petitioning creditor liable at law, without express contract, for messenger's fees till choice.

The solicitor to the fiat was not in general liable to the messenger for his bill, unless in cases of fraud; but where the commission was issued at the instance of the solicitor, and the petitioning creditor was merely the instrument of the solicitor's fraud, and was insolvent, the court ordered the solicitor to pay the messenger's bill to the choice of assignees (*l*).

Solicitor to the fiat ordered to pay messenger.

The costs to be paid by the assignees consist of the bills of the solicitor and messenger for business done subsequently to the choice of the assignees, and costs of all actions and suits in equity by or against the assignees, and all collateral proceedings arising from the bankruptcy. And for these costs the assignees are liable,

What costs to be paid by the assignees.

Their liability where no assets

(*g*) *Ex parte Jones*, 3 De G. & S. 671.

(*h*) *Ex parte Wollheim*, 11 W. R. 128; 32 L. J., Bey. 26; 7 L. T., N. S. 581.

(*i*) *Ex parte Day*, 9 L. T., N. S. 350.

(*j*) *Hamber v. Hall*, 15 Jur. 682; 10 C.

B. 780; 20 L. J., C. P. 157; *Stubbs v. Twynam*, 7 C. B., N. S. 719; 30 L. J., C. P. 8.

(*k*) *Stubbs v. Horn*, 13 L. T., N. S. 529.

(*l*) *Ex parte Burwood*, 2 Gl. & J. 70.

CHAP. XXI.

or although fiat annulled.

But solicitor cannot compel payment when no assets.

Assignees who have acted under invalid commission, liable for costs;

and even after final dividend for messenger's bill;

but not for his fees accrued before choice.

Assignees cannot charge estate with costs of suit carried on without proper consent, nor with interest on solicitor's bill; although such interest sanctioned by creditors in meeting.

No stamps except as in Sched. C. to Act of 1849, payable on any deed, &c. relating to a bankrupt's estate.

although the fiat be annulled, and whether they have assets or not (*m*); and they may afterwards reimburse themselves out of any assets they may get in; but it has been held, that the solicitor cannot, in bankruptcy, compel the assignee to pay his bill if there are no assets, though he is entitled to an inquiry as to whether there are assets (*n*). And where the assignees acted under the commission, and disposed of part of the estate, and commenced an action, in which they failed to establish a sufficient trading, whereby the commission became invalid, the assignees, and not the petitioning creditor, were held liable for the costs incurred in their attempt to support the commission (*o*). Even after final dividend the assignees have been held liable for the amount of the messenger's bill; for they should have reserved sufficient to satisfy that demand before they distributed all the funds (*p*). But the assignees are not liable to the messenger for his fees before the choice of assignees (*q*). If a suit in equity be commenced or carried on by the directions of the assignees, but without the consent required by the statute, the assignees will be liable for the costs, and they cannot charge them to the estate (*r*). An agreement of the assignees to pay interest on the amount of the solicitor's bill of costs will not bind the estate, even though it is sanctioned by a resolution at a general meeting of the creditors (*s*).

And this would seem to be so even now, although the court is directed, by section 136 of the Act of 1861, to have regard to any resolution of a meeting of creditors carried by a majority in number and value, such a contract being an improper one for a solicitor to make with his client.

And by 12 & 13 Vict. c. 106, s. 138, no deed, conveyance, assignment, surrender, admission or other assurance of or to or relating solely to any freehold, leasehold, copyhold or customary messuages, lands or tenements, or to any mortgage, charge, or other incumbrance upon, or any estate, right or interest of and in any messuages, lands, tenements or personal estate, being the estate of or belonging to any bankrupt, or part or parcel thereof, and which after the execution of such deed, conveyance, assignment, surrender or assurance respectively shall, either at law or in equity, be or remain the estate and property of such bankrupt, or

(*m*) *Ex parte Hartop*, 9 Ves. 109; 12 Ves. 349; and see *Ex parte Vaughan*, 14 Ves. 513; *Ex parte Coates*, 3 D. & Ch. 626; 1 M. & Ay. 328.

(*n*) *Ex parte Adams*, 2 M. & Ay. 706; and see *Anon.*, Buck, 475.

(*o*) *Ex parte Paul*, Mon. & M'A. 185.

(*p*) *Ex parte Hartopp*, 1 Rose, 449.

(*q*) *Burwood v. Felton*, 3 B. & C. 43.

(*r*) *Ex parte Whitchurch*, 1 Atk. 210; *Jones v. Yates*, 3 Y. & J. 373.

(*s*) *Ex parte Phillips*, 1 Dea. 368; 2 Mon. & A. 526.

of the assignee appointed or chosen under any bankruptcy, and no power of attorney, writ of *supersedeas* and *procedendo*, order, certificate of conformity, affidavit or other instrument or writing whatsoever relating solely to the estate or effects of any bankrupt, or to any part thereof, or to any proceeding under any bankruptcy, and no affidavit, bond or other proceeding under that act, and no advertisement inserted in the London Gazette relating solely to matters in bankruptcy, shall be liable to any stamp duty, or to any other duty whatsoever, save and except such stamp duty as is mentioned in Schedule (C.) to that act annexed.

By section 37 of the Act of 1861, the court fee theretofore payable in respect of public and private sittings in bankruptcy is abolished.

Court fees on sittings in bankruptcy abolished.

By section 39, General Orders may from time to time direct what fees, other than those therein directed, shall be paid in respect of any matters of bankruptcy or proceedings under that Act (of 1861): provided that all fees shall be received and taken by means of stamps having the word "bankruptcy" impressed or affixed thereon, in manner thereafter provided.

Fees and stamps.

By section 40, the fees by that act made payable, or any of them, may from time to time be varied or abolished by General Orders; and other fees, but not of an amount higher than that by the act prescribed, may be fixed and imposed by such orders; and the provisions of the act respecting stamps are thereby extended and applied to such stamps as may be required by General Orders.

By section 209, no fees are payable on swearing affidavits, except what are allowed by General Orders. (*See post, Evidence.*)

By section 41, every document enumerated in the Schedule (B.) to the act annexed shall, in lieu of all fees thereupon, be printed or written upon vellum, parchment or paper, bearing the stamp duty set opposite to such documents respectively in such schedule, and having the word "bankruptcy" impressed on every such stamp: provided that the commissioners of inland revenue, besides such impressed documents denoting fees, shall provide like stamps on adhesive paper; and all stamp duties and fees directed to be paid under the act may be paid by means of such stamps on adhesive paper affixed to documents requiring a stamp duty. Where any such document shall consist of more than one sheet, only the first sheet thereof shall have such stamp impressed or affixed thereon.

By section 42 of the Act of 1861, no document, which by this act or by any General Order is or shall be required to have a stamp

No unstamped document to be used, &c.

CHAP. XXI.

impressed thereon, shall be received or filed, or be used in relation to any proceeding in the courts, or be of any validity for any purpose whatever, unless or until the same shall have the proper stamp impressed or affixed thereon: provided always, that if at any time it shall appear that any document which ought to have had such stamp has, through mistake or inadvertence, been received or filed or used without having such stamp, the courts may order that such stamp shall be impressed or affixed thereon; and when a stamp shall have been so impressed or affixed on such document, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed or affixed thereon in the first instance: provided also, that nothing therein contained shall affect the provisions contained in the twenty-seventh section of the Act of the session of Parliament of the seventeenth and eighteenth years of the reign of her present Majesty, chapter eighty-three, or the provisions of "The Common Law Procedure Act, 1854," and that every stamp on adhesive paper affixed to a document shall be deemed a stamp impressed thereon.

Officer to de-
face stamp.

The officer receiving the document shall deface the stamp, and the document is not to be filed or delivered until the stamp is defaced, and the person delivering the document is to see to the proper defacement of the stamp. (General Order, 12th October, 1861, rule 34; County Court Order, 1st July, 1863, rule 71.)

Stamps on
petitions.

Where the debts exceed 300*l.*, and the stamp is only sufficient for a petition, where the debts do not exceed 300*l.*, the petition will, in general, be dismissed (*t*), unless it appear very clear that the insufficiency of stamp is owing to a mere mistake; in which case the court has sometimes allowed an additional stamp to be affixed (*u*). But in a late case, where a bankrupt presented his petition on an insufficient stamp, his debt exceeding 300*l.*, the court dismissed the petition unconditionally, and refused to allow it to be retained on payment of the deficiency (*v*); and, notwithstanding the provision for affixing an additional stamp, where documents have been inadvertently received insufficiently stamped, the court, having discovered that through inadvertence an insufficient stamp had been affixed, dismissed the petition with leave to present a new one, and allowed the spoiled stamp (*x*) under the 50th section of the Act of 1861, mentioned below.

(*t*) *Re Harrison*, 8 L. T., N. S. 854;
Re Cracknell, 12 W. R. 138; *Ex parte*
Boreham, 6 L. T., N. S. 338.

(*u*) *Re Campbell*, 6 L. T., N. S. 558.
(*v*) *Re Wilson*, 12 W. R. 1087.
(*x*) *Re J. Flinn*, 9 L. T., N. S. 205.

By section 49 of the Act of 1849, the commissioners of inland revenue were ordered to give proper directions for the preparation and distribution of the proper stamps, and to keep separate accounts, and to pay over monies received into the Bank of England to the credit of the Chief Registrar's Account.

By section 50, it shall be lawful for the commissioners of inland revenue to appoint such persons as they may think fit for the sale and distribution of stamps under this act, and to allow to them such discount or poundage upon such sale or distribution as may by any general rule or order to be made in pursuance of this act be directed or authorized ; and it shall be lawful by any such general rule or order to make regulation for the allowance of such stamps issued under the provisions of this act as may have been spoiled or rendered useless, or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage allowed on the sale of stamps of the like kind.

Under this section, in a case in which a petition was presented for adjudication by a trader against himself under the Act of 1852, in the belief that his assets amounted to 150*l.*, but the money having been claimed with success by a trustee under an assignment made before the petition was filed, the petition thereupon failed, the stamp was allowed as having been used by mistake (*y*). So, where the bankrupt signed a wrong name by mistake to a petition for adjudication against himself the petition was dismissed, but the stamp allowed (*z*). So, where the petition was informal, the description of the bankrupt not being in the heading of the petition, the petition was refused, but the stamp allowed (*a*). But where a petition was abandoned without opening, owing to the lunacy of the respondent, the court refused to allow the stamp (*b*) ; and where a petition filed was abandoned and another petition was filed by another creditor, the court likewise refused to certify for a spoiled stamp (*c*).

Cases in which stamps spoiled or not used, allowed for.

Such allowance refused.

By section 51 of the Act of 1849, the provisions of former acts relating to stamps are extended to the stamps under these acts. It is the duty of the taxing master to tax the costs mentioned in the

Taxation under ss. 13 & 14 of

(*y*) *Re Thompson*, 33 L. T. 79.

(*z*) *Re Pollastrini*, 7 L. T., N. S. 171.

(*a*) *Re Bush*, 8 L. T., N. S. 553.

(*b*) *Ex parte Knowles*, 31 L. T. 156.

(*c*) *Re Moody*, 5 L. T., N. S. 462.

CHAP. XXI.

the Act of 1861, by whom to be made.

Petitioning creditor, acting as solicitor for himself, entitled to full costs.

Re-audit of accounts allowed after long interval, the petitioning creditor having been sole assignee and solicitor to fiat.

Assignees' costs in actions at law, &c., to be taxed.

Costs of assignees consenting, not allowed.

13th section of the Act of 1861, and of the registrars to tax the ordinary costs in the district courts, (sect. 14 of the Act of 1861.) (*See ante, Taxing Master and Registrars.*)

By 12 & 13 Vict. c. 106, s. 114, the solicitor's bill to the choice of assignees is payable under an order of the commissioners, and all orders for payment of money and costs are taxable; but this provision of the statute for the taxation of the solicitor's bill, up to the choice of assignees, applies only to cases between the assignees and the estate, and therefore the solicitor can maintain an action for the amount of his bill without its being so taxed (*d*).

A petitioning creditor, acting as his own solicitor, is entitled to his full costs, and not merely costs out of pocket, and his bill is to be taxed by analogy to the case of an attorney acting for himself professionally rather than to that of a trustee (*e*).

In *Ex parte Newton* the petitioning creditor was also sole assignee and acted as solicitor to the fiat which was issued in 1832: sixteen years afterwards the bankrupt petitioned for a re-audit of the accounts in which the solicitor's bill of costs had been allowed, and the court, considering the union of the characters of assignee and solicitor to the fiat adverse to public policy, made the order (*f*).

An assignee, however, who acts as solicitor will be allowed his costs out of pocket, and a fair charge for his clerk's time actually employed in the matter of the bankruptcy, but no profit (*g*).

Where the bankrupt sued out a fiat against himself, the solicitor of the assignees, after they were chosen, was ordered to pay the solicitor of the bankrupt his bill up to the choice (*h*).

As to the assignees' costs, namely, for business done after the choice of assignees, all costs incurred by them in actions at law and suits in equity must be taxed by the proper officer of the court in which such actions or suits respectively have been prosecuted; all other costs must be taxed by the master or registrar as above stated.

In such taxation costs will not be allowed to an official assignee who appears merely to consent (*i*). So, where assignees neglected to oppose the passing of a bankrupt's last examination and left it to creditors to do so, who substantiated their charges, the assignees were not allowed their costs of appearance (*k*). And where a com-

(*d*) *Taylor v. M'Gaugan*, 4 Car. & P. 96.

(*e*) *Ex parte Chamberlayne*, 4 De G. & S. 17; 14 Jur. 997.

(*f*) *Ex parte Newton*, 13 Jur. 94.

(*g*) *Ex parte Newton*, 3 De G. & S. 584.

(*h*) *Ex parte Parsons*, De G. 342; see also *Re Wheatley*, 14 W. R. 290.

(*i*) *Re Thorneycroft and Griffiths*, *Ex parte Churchill*, 32 L. J., Bcy. 48.

(*k*) *Ex parte Brook*, 8 L. T., N. S. 375; *Ex parte Greenwood*, 12 W. R. 924.

mission had, through the default of the official assignee, miscarried in matter of account, the assignee was not allowed his costs of the appeal to set the order right (*l*).

If the petitioning creditor, before he applies to tax, has notice of an action of the solicitor for the bill, he must, as a condition of the order to tax, undertake to give judgment of the term with stay of execution till seven days after taxation; but if the petition to tax is presented before notice of the action, the creditor will not be called upon to give judgment of the term (*m*). The solicitor may have the bill taxed, and may have an order upon the assignee for payment, even although the assignee has no effects of the bankruptcy; and where, after the choice of assignees, it was agreed, with their privity that the solicitors both of the petitioning creditor and of the assignee should act together as the solicitors to the commission, and share the profits, the solicitors of the petitioning creditor were held entitled to an order for taxation and apportionment of the bill, and for payment of their shares by the assignees (*n*). And even the bankrupt, if he has settled with the creditors, and the assignees neglect to have the bill taxed by the commissioner, may petition to have the solicitor's bill taxed (*o*); and where an attorney, not admitted of the Court of Bankruptcy, employed an agent, who was admitted, to strike a docket, and, after payment of the agent by the official assignee, the attorney delivered a bill to the petitioning creditor, containing, among other matters, the charges for striking the docket (*p*), and charges for attendance to prevail upon certain creditors to vote in the choice of assignees, and preparing proofs for that purpose (*q*); it was held, that the items relating to the bankruptcy gave the court jurisdiction to tax the whole bill (*r*). So, also, a single item for attending a mortgagee, summoned before a commissioner, would make the bill taxable (*s*); but the court does not order a re-taxation of bills, already taxed by the officers of the court where the business was done (*t*). Where assignees are removed, and ordered to account, the new assignees cannot petition to tax the bill of the solicitors of the former assignees paid by them; for the bill will necessarily form an item in the account pending, and may be

Conditions on which petitioning creditor allowed to tax solicitor's bill.

Solicitor may have bill taxed, with order for payment.

Bankrupt may have bill of assignees' solicitor taxed.

Taxation of bill of attorney not admitted of Court of Bankruptcy.

Bill of solicitor of removed assignees, not taxable, if paid.

(*l*) *Ex parte Graham, Re Grant*, 12 W. R. 1.

(*m*) *Ex parte Randall*, 1 M., D. & D. 341.

(*n*) *Ex parte Coates*, 3 Dea. & C. 626; 1 Mon. & A. 328; but see *Ex parte Adams*, 2 Mon. & A. 706.

(*o*) *Ex parte Bayley*, Mon. 208.

(*p*) *Ex parte Cass*, 2 Mon. & A. 170.

(*q*) *Ex parte Davis*, 3 Dea. 320; 3 Mon. & A. 624.

(*r*) *Ex parte Cass*, 2 Mon. & A. 170.

(*s*) *Ex parte Williams*, 1 Dea. 469; 2 Mon. & A. 578.

(*t*) *Ex parte Christy*, 3 Mon. & A. 84; 4 Dea. & C. 414.

CHAP. XXI.

Discretion of court in taxation, not excluded by table of fees.

Court cannot award compensation for services; nor tax bill for business done before fiat.

Costs for expenses before fiat must be for matter ancillary to fiat.

Ex parte Cooke.
Ex parte Comber.

Re M'Turk.

What expenses are just allowances.

taxed under that order (*u*). The table of fees for taxation of a solicitor's bills in bankruptcy does not exclude the exercise of the discretion of the court in particular cases (*x*). In *Ex parte Bateman* the solicitor's bills of costs were taxed in March, 1851, by the registrar of a District Court of Bankruptcy, sitting in his ordinary jurisdiction as registrar, upon the ex parte application of the solicitors, but in the presence of the official assignee, and it was held that the jurisdiction of the registrar, prior to the Orders of October, 1852, to tax the bills, was questionable; but whether this were so or not, the order to review the taxation, the bills being unpaid in August 1853, was a matter of course, and that, without proof of objectionable items (*y*).

The court will, however, enter into consideration as well of a particular item of expense disallowed, as of the principle upon which the taxation has proceeded; but it has no jurisdiction to award compensation for services performed (*z*), or to tax a bill for business done prior to the issue of the fiat, unless the business is mixed up with the proceedings under the fiat (*a*), nor, it would seem, to allow costs actually incurred in proceedings not strictly under the adjudication or by virtue of it (*b*). In some cases under the old law the court has allowed expenses properly incurred prior to the adjudication (*c*); but since the repeal of the 185th section of the Act of 1849, under which section *Ex parte Tomlinson* was decided, such costs must be for matter strictly ancillary to the adjudication, and in nowise incurred under a title or claim inconsistent with it (*d*). In *Ex parte Cooke* (*e*), the costs incurred by trustees under a deed were allowed under a subsequent adjudication, but the application was not opposed, and it appeared that the work done by the trustees was beneficial to the creditors under the bankruptcy, and no doubt was suggested as to the jurisdiction of the court. The principle, however, laid down in *Ex parte Comber* is confirmed by the decision in the converse case, where a petition for adjudication being dismissed by reason of the subsequent registration of a deed under the 192nd and 198th sections of the Act of 1861, the court held that it had no jurisdiction to order costs to be paid to the petitioning creditor (*f*). For the purpose of bringing expenses within the description of just allowances, it is not necessary to show that

(*u*) *Ex parte Carter*, 2 Dea. & C. 626.
(*x*) *Ex parte Templer*, 13 Jur. 78.
(*y*) *Ex parte Bateman*, 18 Jur. 455.
(*z*) *Ex parte Burles*, 1 Dea. & C. 543.
(*a*) *Ex parte Cass*, 4 Dea. & C. 274.
(*b*) See *Re Comber*, 12 W. R. 767.

(*c*) *Ex parte Evans*, 4 D. & Ch. 392;
Ex parte Tomlinson, 5 L. T., N. S. 13.
(*d*) *Re Comber*, supra.
(*e*) 10 L. T., N. S. 821.
(*f*) *Ex parte Jones*, *Re M'Turk*, 12 W. R. 1094.

they have actually benefited the estate if there was a fair probability of their doing so. In a case in which trustees, under an assignment for benefit of creditors, employed an agent to proceed to America to recover part of the assigned property; and afterwards the debtors became bankrupt, and three of the trustees were appointed assignees, it was held, that, under the circumstances, the assignees might be said to have adopted the agency, and ought to be allowed in their accounts the expenses of employing the agent (*g*); and under the head of just allowances (*see* 12 & 13 *Vict. c.* 106, *s.* 185), the assignees were allowed extra costs incurred by them in conducting prosecutions for perjury and conspiracy in proving debts under the commission (*h*), or in a prosecution of the bankrupt although it had failed, if such a prosecution was proper (*i*), or law charges incurred by the petitioning creditor, of which the assignees afterwards had the benefit (*k*); and also travelling expenses *bonâ fide* incurred for the benefit of the estate (*l*); in all such cases, however, the assignees act at their own risk, unless, before incurring the costs, they have obtained the order of the court to act in so doing; but just allowances will not entitle assignees to the expense of meetings of creditors, to consider what should have been determined of themselves, nor to charges for tavern expenses of bidders at a sale of the bankrupt's property (*m*). The costs for double sittings must be applied for at the time (*n*); but the costs of double sittings will not be allowed in public meetings. Extra charges may be made for clerks (*o*); but the solicitor of the trade assignees will not be allowed his costs of the audit unless he attends the sitting, and make a memorandum that he has perused and approves the accounts (*p*); and the assignee must depose to the accuracy of the accounts, and where the solicitor to the fiat had received and paid all monies on account of the estate, and at the audit verified the accounts as to their accuracy, and the assignees deposed that they had neither received nor paid anything, except what had been received and paid by the solicitor, the accounts were opened for taxation after a lapse of three years from the audit, and the retainer by the solicitor of the amount of the bill from his receipts was not considered a payment so as to preclude taxation (*q*).

Just allowances, what expenses deemed to be.

What not.

(*g*) *Ex parte Shaw*, De G. 242.
 (*h*) *Ex parte Strange*, Mon. & M'A. 31.
 (*i*) *Ex parte Cumming*, 2 Dea. 93; 3 Mon. & A. 29.
 (*k*) *Ex parte Christy*, 3 Mon. & A. 90.
 (*l*) *Ex parte Joyner*, 2 Mon. & A. 1;
Ex parte Lovegrove, 2 Mon. & A. 4; 3 Dea. & C. 763.

(*m*) *Ex parte Molineux*, 2 Dea. 33; 3 Mon. & A. 721.
 (*n*) *Anon.*, Fonb. B. C. 63.
 (*o*) *Re Chisholm*, Ib. 50; *Re Woolsey*, Ib.
 (*p*) *Anon.*, Fon. B. C. 117.
 (*q*) *Ex parte Rees*, De G. 205; 9 Jur. 996.

CHAP. XXI.

Where an action was brought in the name of the petitioning creditor by the direction of the court against a person supposed to be a concealed principal of the bankrupt who was supposed to be his agent, with the intention of establishing the liability of the supposed principal to guarantee the debts of the agent, the plaintiff, although nonsuited, was allowed his costs out of the bankrupt's estate (*r*). Where an action was brought by direction of the commissioner to try a disputed point which was determined against the assignees, some of the creditors objected to the costs of the action being allowed out of the estate, as not being an action which it was within the jurisdiction of the commissioner, under section 153 of the Act of 1849, to order; but the Lords Justices, on appeal, allowed the costs, as the objection, if valid, should have been taken before the result of the action was known (*s*).

On order to tax, court refuses inquiry as to negligence, &c., of solicitor.

Ex parte Billinton.

Ex parte Southall.

And the court, on an order to tax, refused to direct any inquiry as to the unskilfulness and negligence of the solicitor (*t*).

There is added to the marginal note of this case "unless with a view to ascertain if the amount of the bill be sufficient to constitute a good petitioning creditor's debt," but this seems only to be added in consequence of a case, *Ex parte Southall* (*u*), cited in argument, and remarked on in the principal case in question. The case of *Ex parte Southall* was of a very peculiar nature; it was an application by a bankrupt to annul an adjudication which had been made on the petition of an attorney; the petitioning creditor's debt was alleged to be the amount of a bill of costs, which had been incurred in another bankruptcy, under which the present bankrupt had been assignee, and part of such bill was for costs in an action by the assignees under the former bankruptcy against a debtor to the estate, in which the assignees had been nonsuited, owing to the negligence of the solicitor as alleged by the present bankrupt. It was in that case said by Sir G. Rose, that an action at law was the proper mode to try the question of negligence, and the order for taxation, having regard to the question of negligence, was made by consent of the parties; this case cannot be, therefore, held an authority, that even in a case of that description the court would make such an order if resisted.

With what costs assignees may charge the estate.

What costs in

The assignees, however, may make themselves liable to the solicitor beyond what is thus allowed in taxation, although they cannot, it should seem, charge the estate with more than the amount taxed (*x*). And all other costs in bankruptcy, such as

(*r*) *Re Allen*, 3 L. T., N. S. 312.

(*s*) *Ex parte Edmondson*, 31 L. J., Bcy. 32; 6 L. T., N. S. 234.

(*t*) *Ex parte Billinton*, 1 M., D. & D.

375.

(*u*) 4 Dea. 91.

(*x*) *Finchett v. How*, 2 Camp. 278.

costs for superseding the fiat upon the petition of the bankrupt (*y*), or for obtaining the bankrupt's certificate (*z*), or the like, may be taxed in like manner. And where the commission was superseded by arrangements between the parties, and the bankrupt paid the solicitor's bill without taxation, in order to facilitate the supersedeas, the court, on petition, ordered it to be taxed (*a*). But where the fiat under which the bill was incurred had been abandoned, and another fiat issued, the court had no jurisdiction to order the bill to be taxed (*b*). Several bills incurred by the assignee as assignee, though for different matters, can be included in one order for taxation (*c*); and where the assignees have been guilty of misconduct, a creditor can obtain an order to tax the solicitor's bill, which has been paid without being taxed (*d*). If the bill has been paid, though under protest, objectionable items must be set forth in the petition, to give the court jurisdiction (*e*). And, after payment and acquiescence for a considerable time, and the delay unaccounted for, the court will not order a bill to be taxed (*f*).

CHAP. XXI.

bankruptcy may be taxed.

Costs under abandoned fiat.

Bills of same assignee in different matters.

Order to tax paid bill, contents of petition for.

When the bill of costs of the solicitor to the fiat had been taxed and paid before 1835, and the assignees' accounts containing these payments had been audited and passed by the commissioners, and one of the solicitors to the fiat and two of the assignees had since died, it was held, that on a petition presented in 1844 for taxation of the bills came too late for retaxation of the bills so taxed and paid, but as to other bills delivered in and before 1834, and paid by the assignees by payments on account ending in 1834, but which bills had never been taxed, the petition was not too late (*g*).

Paid and unpaid bills, order to tax, after delay.

Ex parte Woolston.

Where the solicitor's bill had not been taxed but was paid by his retaining the amount, and seven months afterwards, in July, 1851, he was discharged, and another solicitor appointed; and in October, 1852, an application was made for taxation of the bill which was ordered by the commissioner; the Lord Chancellor, on appeal, doubted the jurisdiction of the court to direct the taxation, and even if the jurisdiction existed, it was held, that this was not a case to call for its exercise (*h*).

Delay in seeking taxation.

(*y*) *Ex parte Hatherway*, 2 Mad. 329.(*z*) *Ex parte Warren*, Archb. Bcy., 11th ed. 437.(*a*) *Ex parte Heyden*, 2 Glyn & J. 52.(*b*) *Ex parte Neal*, 1 Dea. & C. 486.(*c*) *Ex parte Barrett*, 3 Dea. & C. 731.(*d*) *Ex parte Castle*, 1 Mon. & A. 665.(*e*) *Ex parte Beresford*, 2 Glyn & J.

259.

(*f*) *Ex parte Hutchinson*, 2 Mon. & A. 35; 3 Dea. & C. 829; 4 Dea. & C. 530; *Ex parte Christy*, 4 Dea. & C. 414.(*g*) *Ex parte Woolston*, 3 M., D. & D. 702.(*h*) *Ex parte Pemberton*, 1 De G., M. & G., B. C. 254; 2 De G., M. & G. 960.

CHAP. XXI.

Costs of taxing where disallowance of one-sixth of bill taxed, or of aggregate of several taxed together.

No jurisdiction to order costs of taxation from executor of deceased solicitor.

Costs of appeal against commissioner's order.

Remedies for recovering costs.

Petitioning creditor and assignees have lien on assets, but must apply to court to enforce.

Solicitors of petitioning creditor and assignees have remedy by action against their clients, or petition (*infra*, 1075).

Expenses for which petitioning creditor liable.

How to be reimbursed.

If one-sixth of the amount of the bill or more is taken off in taxation, the costs of taxation are paid by the party whose bill is taxed, as in other cases (*i*). And where several bills were taxed, the one-sixth was calculated on the aggregate amount (*j*); and where one of three assignees, in opposition to his co-assignees, succeeded in taxing off one-sixth of the bill, he was held entitled to his extra costs incurred in so doing, by having to employ a solicitor for himself, and the estate was held liable to the difference between the costs incurred as costs between party and party and between solicitor and client (*k*). The court has no jurisdiction to order the executor of a deceased solicitor to pay the costs of taxation (*l*), or to refund a balance found due from his testator (*m*).

Where an order of a commissioner is discharged on appeal, the costs of the appeal may be given to the appellant (*n*). The petitioning creditor and the assignees have a lien on the assets for their costs, which lien can be enforced only by application to the court; thus, in a case where the assets were sold on credit, and part of the purchase-money was paid and applied to the payment of the solicitor's bill of costs up to the choice, and on the bankruptcy of the purchaser the assignee was ordered to make good the purchase-money unpaid; the solicitor was ordered to be paid the remainder of his bill, although more than six years had elapsed since the last item had been incurred (*o*). The solicitors of the petitioning creditor and of the assignees have, however, also a remedy by action against their clients, but the action must be brought against the petitioning creditor, or by the solicitor against the assignees (*p*). And where the petitioning creditor was afterwards made assignee, and the action was brought against him and the other assignee jointly, it was held that the plaintiff could not recover (*q*). The petitioning creditor, however, is liable only for the ordinary and necessary expenses, unless incurred by his orders; and therefore it has been held, that he was not liable to the messenger for the expenses of an unnecessary and fruitless journey to the Isle of Man, undertaken without his authority (*r*).

Whatever sums the petitioning creditor is thus obliged to pay

(*i*) *Ex parte Wood*, Buck, 129; *Ex parte Hatherway*, 2 Mad. 329.

(*j*) *Ex parte Barrett*, 1 Mon. & A. 447; 3 Dea. & C. 731.

(*k*) *Ex parte Fosbrooke*, 5 Jur. 370; 1 M., D. & D. 533.

(*l*) *Ex parte Spackman*, 3 Mon. & A. 135; *Ex parte Hammond*, Mon. & C. 136; 4 Dea. 48.

(*m*) *Ex parte Spackman*, *supra*.

(*n*) *Re Leighton and Bennett*, Law Rep. Ch. Appeals 1, p. 331.

(*o*) *Ex parte Brutton*, De G. 116; 9 Jur. 86.

(*p*) *Burwood v. Felton*, 4 D. & R. 621; *Ex parte Haynes*, 1 Glyn & J. 35.

(*q*) *Finchett v. How*, 2 Camp. 278; see *Tarn v. Heys*, 1 Stark. 278.

(*r*) *Billings v. Waters*, 1 Stark. 363.

he must be reimbursed according to the priority settled by the rule 114 (*p.* 1061, *ante*), unless he consents to a different appropriation (*s*). The court cannot order the solicitor's bill up to the choice of assignees to be paid by the petitioning creditor (*t*), but will order it to be paid out of assets received, and upon the petition as well of the solicitor as of the petitioning creditor (*u*).

Solicitor's bill to choice, how paid; and jurisdiction of court as to payment of.

As to the costs for which the assignees are liable, the solicitor may have his remedy, either by petition (*v*), or by action; and this, even before the bill has been taxed (*w*). A solicitor's bill for business in bankruptcy is expressly within the 6 & 7 Vict. c. 73, s. 37, and therefore must be signed and delivered, as required by that section before action brought.

Remedy of solicitor against assignees, petition or action.

Bill to be signed and delivered, before action.

A plaintiff in equity who has become bankrupt before decree will not, in the absence of gross misconduct, be ordered to pay the costs of a suit in which he has lost all interest (*x*).

As to costs of prosecution of bankrupt, *see post*, *Crimes and Penalties*.

By section 28 of the 23 & 24 Vict. c. 127, it is enacted, that in every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, matter or proceeding in any court of justice, it shall be lawful for the court or judge before whom any such suit, matter or proceeding has been heard or shall be depending, to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved, and upon such declaration being made such attorney or solicitor shall have a charge upon and against, and a right to payment out of, the property of whatsoever nature, tenure or kind the same may be, which shall have been recovered or preserved, through the instrumentality of any such attorney or solicitor, for the taxed costs, charges and expenses of or in reference to such suit, matter or proceeding; and it shall be lawful for such court or judge to make such order or orders for taxation of and for raising and payment of such costs, charges and expenses out of the said property as to such court or judge shall appear just and proper, and all conveyances and acts done to defeat or which shall operate to defeat such charge or right shall, unless made to a bonâ fide purchaser for value, without notice, be absolutely void and of no effect as against such charge or right; provided always, that no such order shall be made

Power for courts of justice to charge property recovered by an attorney or solicitor, with his costs.

(*s*) *Hornidge v. Eyland*, 2 Scott, 357.

(*t*) *Anon.*, Buck, 475; but see *Ex parte Johnson*, 1 Glyn & J. 23, contra.

(*u*) *Ex parte Benson*, 2 Mon. & A. 582.

(*v*) *Ex parte Hartopp*, 1 Rose, 449.

(*w*) *Tarn v. Heys*, 1 Stark. 278; see *Finchett v. How*, 2 Camp. 278; *Taylor v. M'Gaugan*, 4 Car. & P. 96.

(*x*) *Boucicault v. Delafield*, 12 W. R. 1025.

CHAP. XXI.

This act 23 & 24 Vict. c. 127, sect. 28, applicable to Court of Bankruptcy, *quære*.

Bankrupt's books, not subject to lien for costs, &c.

Solicitor still has lien on property of bankrupt coming to his hands other than books and papers, and on latter, *semble*, for business before bankruptcy.

by any such court or judge in any case in which the right to recover payment of such costs, charges and expenses is barred by any statute of limitations. The writer is not aware whether any case has yet arisen in the Court of Bankruptcy under this enactment, but there seems nothing to prevent its application to proceedings in that court; the general authorities upon it belong, however, to the law relating to attorneys and solicitors, and are beyond the purpose of this work.

By section 121 of the Act of 1861, it is provided that no person shall be entitled as against the official or creditors' assignee to withhold the books of account of the bankrupt, or to claim any lien thereon. Before this enactment the general lien of solicitors or attorneys seems to have been subject to no such restriction, and the court would have protected their right of lien, even when it might order the books to be given up, by ordering that they should be restored after the purpose of their production had been served, or by making provision for the payment of the sum, in respect of which the lien was due, out of the estate; for the assignees, up to this time, had no greater right over the documents belonging to the bankrupt's estate on which a solicitor claims a lien, than the bankrupt himself had (*y*). A solicitor has still, however, his lien on property recovered by him, or coming to his hands as solicitor, other than the books and papers belonging to the bankrupt's estate, and may consequently retain his costs out of monies of the bankruptcy coming to his hands (*z*). He is also still entitled, it seems, to a lien on the papers in his hands before the bankruptcy for business done for the bankrupt before the bankruptcy (*a*). In a recent case, however, it was held that when a trader petitions the court under the arrangement clauses of the Act of 1861, and the usual order is made that the assignee is to have and possess the estate, such trader cannot afterwards lodge with his attorney, or transfer to him, any portion of the assets as security for his costs, so as to create a lien in his favour (*b*).

2. EVIDENCE.

The petition for adjudication of bankruptcy proves itself by its mere production. So, also, the production of the certificate of the Seal of Court of

(*y*) *Ex parte Underwood*, De G. 190; 9 Jur. 632; *Ex parte Hawley*, Fonb. B. C. 243. See Stokes on the Lien of Attornies and Solicitors, 16.

(*z*) *Re Wickenden and Mansell*, 12 W. R. 388.

(*a*) *Re Markby*, 11 L. T., N. S. 250.

(*b*) *Re North*, 13 L. T., N. S. 100.

appointment of assignees under the seal of the Court of Bankruptcy, is evidence of the appointment. (12 & 13 Vict. c. 106, s. 236.)

CHAP. XXI.

Bankruptcy as evidence.

By 12 & 13 Vict. c. 106, s. 236, any fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, petition for arrangement between a debtor and his creditors, assignment, appointment of assignees, certificate, deposition or other proceeding or order in bankruptcy, or under any such petition for arrangement, appearing to be sealed with the seal of the court, or any writing purporting to be a copy of any such document, and purporting to be so sealed, shall at all times, and on behalf of all persons, and whether for the purposes of this act or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of the court, without any further proof thereof, and no such document or copy shall be receivable in evidence unless the same appear to be so sealed, except where otherwise in that act specially provided: and it is, by the same section, provided that all fiats and proceedings under the said act which may have been entered of record before the passing of the act, passed in the parliament holden in the second and third years of the reign of his late majesty King William the Fourth, intituled "An Act to amend the Laws relating to Bankrupts," or purporting to have been sealed before the commencement of the Act of 1849 with the seal of the Court of Bankruptcy theretofore in use, or a writing purporting to be a copy of any such document, and purporting to have been so sealed, shall and may upon the production thereof, and in the case of any fiat or proceedings entered of record before the passing of the last-mentioned act, (2 & 3 Will. 4, c. 114,) with the certificate thereon, purporting to be signed by the person duly authorized to enter proceedings in bankruptcy, or by his deputy, be received as evidence of the same, and of the same having been duly entered of record, and of such proceedings having respectively taken place, anything thereinbefore contained notwithstanding; and by section 237, since repealed, it was enacted, that all courts, judges, justices and persons judicially acting, and other officers, should take judicial notice of the signature of any commissioner or registrar of the court and of the seal of the court, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of that act, 12 & 13 Vict. c. 106.

Proceedings purporting to be sealed with, receivable as evidence.

By section 203 of the Act of 1861, any petition for adjudica- Petitions and

CHAP. XXI.

other proceedings in bankruptcy, and copies purporting to be sealed with the seal of the court, admissible in evidence.

tion, or arrangement, adjudication of bankruptcy, assignment, appointment of official or creditors' assignee, certificate, deposition or other proceeding or order in bankruptcy, or under any of the provisions of that act, appearing to be sealed with the seal of any court under that act, or any writing purporting to be a copy of any such document, and purporting to be so sealed, shall at all times, and on behalf of all persons, and whether for the purposes of that act or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of such court, without any further proof thereof; and no such copy shall be receivable in evidence unless the same appear to be so sealed, except where otherwise in the same act specially provided.

Judicial notice to be taken of seal of Court of Bankruptcy, &c.

By section 204, all courts, judges, justices, and persons judicially acting, and other officers shall take judicial notice of the signature of any commissioner or registrar of the courts, and of the seal of the courts, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this act.

Admission of documents.

By the stat. 15 & 16 Vict. c. 76, s. 117, either party may call on the other party by notice to admit any document saving just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the master a saving of expense.

Advertisements, when evidence.

By 12 & 13 Vict. c. 106, s. 240, a copy of the London Gazette and of any newspaper containing any such advertisement as is by that act directed or authorized to be made therein respectively shall be evidence of any matter therein contained, and of which notice is by that act directed or authorized to be given by such advertisement; and all proceedings or notices required by that act to be inserted in the London Gazette shall be marked with the seal of the court from which such proceedings or notices shall be issued and certified by one of the registrars of the said court; and by sect. 242, in the event of the death of any witness deposing to the petitioning creditor's debt, trading or act of bankruptcy, under any bankruptcy theretofore or thereafter, or under

On death of witness, office deposition, or

any petition for arrangement, the deposition of any such deceased witness, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall in all cases be received as evidence of the matters therein respectively contained. CHAP. XXI.
copy thereof, to be evidence.

By section 205 of the Act of 1861, forging the seal of the court or the signature of the commissioner or any officer of the court is made a felony. (*See post, Crimes and Penalties.*) Forging seal of court, &c. a felony.

By section 206 of the same act, a copy of any petition filed in the Court for the Relief of Insolvent Debtors in England, or in any court having jurisdiction for the relief of insolvent debtors, or in bankruptcy, in any of her Majesty's dominions, colonies or dependencies, and of any vesting order, schedule, order of adjudication or other proceedings, purporting to be signed by the officer in whose custody the same shall be or his deputy, certifying the same to be a true copy of such petition, vesting order, schedule, order of adjudication or other order or proceedings, and appearing to be sealed with the seal of such court, shall at all times be admitted under that act as sufficient evidence of the same, and of such proceedings respectively having taken place, without any other proof whatever given of the same. Evidence as to insolvency.

As to this section, *see ante*, p. 149.

It has already been shown that, by section 50 of the Act of 1861, the several courts exercising jurisdiction under the act may in all matters within their respective jurisdictions take the whole or any part of the evidence, either vivâ voce, on oath, or by interrogatories in writing, or upon affidavit, or by commission abroad. Evidence, how to be taken.

An affidavit or affidavits in proof of the facts stated in the petition must be filed with the registrar, and when once sworn cannot be withdrawn or abandoned (*a*). Affidavits must be correctly entitled in the matter, and where, on a petition to annul a joint fiat under which only one partner had been declared bankrupt, the affidavits were entitled in the one so declared bankrupt only, they were ordered to be amended (*b*). If the address of a petition is amended, the affidavits must be re-sworn (*c*); and when the petition and affidavits in support had been wrongly entitled, and the petition had been amended under an order, the court allowed the affidavits to be taken off the file to be amended and re-sworn (*d*). Affidavits in support of petition.
How to be entitled.
To be re-sworn, when.

(a) *Ex parte Labrey*, 3 Dea. & C. 232.

(b) *Ex parte Fisher*, Mon. & C. 345.

(c) *Ex parte Meath*, Mon. 520 ; and see

Rule 16, Gen. Ord., 19th October, 1852.

(d) *Ex parte Burton*, 3 De G. & S. 578 ;

13 Jur. 297, 420 ; 18 L. J., Bcy. 17.

CHAP. XXI.

Affidavits to be left with registrar.

Statements in, to be positive and limited to facts within deponent's knowledge, except in certain cases.

Affidavit in support of fiat admissible on petition to annul, but must be in answer to petition to annul.

Unless new evidence adduced in support of fiat, court will grant application to annul, *semble*.

Notice to bankrupt of intention to use proceedings as evidence.

By General Order, 19th October, 1852, rule 25, no affidavit is to be filed, unless the same is properly intituled in the court and matter in which the same is to be used, and after any affidavit is left with a registrar to be filed, the same is on no account to be delivered to any person whatever, except by order of the court. The affidavit should, in general, be positive, stating such facts only as are within the deponent's knowledge; swearing merely to hearsay information and belief will not be sufficient, unless indeed the case be pregnant with circumstances of suspicion (*e*), or that the party from whom the information was received has refused to make an affidavit (*f*); otherwise, it seems such an affidavit need not be answered. An affidavit in support of the adjudication may and might (*g*), even before the amendment of the law of evidence which allowed the evidence of interested parties, have been read on a petition to annul, but it must be an affidavit filed in answer to the petition to annul, not the original affidavit on the petition for adjudication, for if the petition of the bankrupt to annul is supported by affidavit, impeaching the requisites of the adjudication, the depositions on the proceedings are not admissible as evidence against the bankrupt (*h*); but the court will look at them for the purpose of governing its discretion as to whether it shall annul or not (*i*). If it there finds reason to believe the adjudication to have been bad, and no new evidence, in answer to the application to annul, is brought forward to support the adjudication, the court will probably annul (*i*). Where the court merely refers to the proceedings they are not, properly speaking, evidence either for or against the bankrupt, and he has, strictly speaking, no right to a copy of them (*k*), but the court will not strictly enforce this rule where the application to annul by the bankrupt seems *bonâ fide* (*l*). The proceedings may be made evidence against the bankrupt by notice that it is intended to use them on the application and he is then entitled to have copies (*m*), and if the assignees rely on the depositions upon the proceedings, and they are insufficient, the adjudication is annulled; and if sufficient, then the bankrupt is entitled to an opportunity of controverting the statements therein (*n*).

(*e*) *Ex parte Coles*, Buck, 242.

(*f*) *Ex parte Stevens*, 4 Mad. 256.

(*g*) *Ex parte Lawley*, Mon. 519; 1 D. & Ch. 469.

(*h*) *Ex parte Prescott*, 1 M., D. & D. 199; see also *Ex parte Foster*, 3 Dea. 175; 3 M. & Ay. 592.

(*i*) See *Ex parte Gallimore*, 2 Rose, 235; *Ex parte Vypond*, 1 Mad. 624.

(*k*) *Ex parte Abbott*, 2 M., D. & D. 64; *Ex parte Foster*, 3 Dea. 175; 3 M. & Ay. 592.

(*l*) *Ex parte Foster*, *supra*.

(*m*) *Ex parte Goodwin*, 1 Dea. 695; 2 M. & Ay. 532.

(*n*) *Ex parte Field*, 3 Dea. 24; 3 Mon. & A. 375.

If the affidavits are contradictory, the court will offer an examination *vivâ voce*, or an issue; but if taken by the bankrupt, it must be under his liability for costs (*o*). If the objection is to the petitioning creditor's debt, and the bankrupt swears the debt is not due, this is sufficient to put the respondents upon proof; but if the existence of the debt, two years before, is proved, it is on the bankrupt to prove that it has been paid (*p*); nor are the proceedings themselves in such case evidence against the bankrupt, unless notice of the intent to use them is given and copies furnished to him (*q*).

Practice, where affidavits contradictory.

This rule, however, cannot be said to have been uniformly followed; thus, where the bankrupt petitioned to annul upon an affidavit of there having been no act of bankruptcy, the court, although there was no affidavit in answer, and there had been no notice that the proceedings would be produced, looked into the proceedings to ascertain the sufficiency of the act of bankruptcy (*r*).

Rule as to notice to use proceedings, not uniform.

It has been held distinctly that on an application of the bankrupt to annul for want of the requisites of the fiat, it lies on respondents to prove the affirmative (*s*); and the assignees may rely upon the depositions in the proceedings, and, in strictness, even without giving the bankrupt notice, or allowing him to see them, though the court will not enforce this rule against a bankrupt petitioning *bonâ fide* to annul, but will allow him to answer the depositions (*t*).

Onus of proof upon bankrupt's application to annul.

If the affidavits are scandalous or impertinent, an order may be obtained to have them taken off the file, or the scandal or impertinence expunged (*u*). In the case of scandal, the application need not be by the party scandalized; any person may apply (*x*), and the reference may be obtained at any time on motion, even after the hearing of the petition (*y*); and the motion to refer for scandal is a motion of course (*z*), unless under particular circumstances; as where the hearing of a petition stood over by consent, and upon its being called on, a motion was made to refer for scandal and impertinence, whereupon it was held that the

Semble, court in such case will allow bankrupt to answer depositions.

Scandal and impertinence in affidavits.

Who may apply to expunge.

(*o*) *Ex parte Bunn*, 3 Dea. 120.

(*p*) *Ex parte McIntosh*, 2 Dea. 35.

(*q*) *Ex parte Goodwin*, 1 Dea. 695; 2 M. & Ay. 532.

(*r*) *Ex parte Vypond*, 1 Mad. 624; see also *Ex parte Gullimore*, 2 Rose, 235.

(*s*) *Ex parte Welden*, 3 Dea. 240; 3 Mon. & A. 493; *Ex parte Abbott*, 2 M., D & D. 64.

(*t*) *Ex parte Foster*, 3 Dea. 175; 3

Mon. & A. 592.

(*u*) *Ex parte Chisman*, 2 Glyn & J. 315.

(*x*) *Ex parte Hetherington*, 1 Mon. & A. 607; but see *Ex parte Pelham*, Mon. 209, contra; *Ex parte Kirby*, Mon. 68.

(*y*) *Ex parte Williamson*, 2 Dea. & C. 414; Mon. & B. 267.

(*z*) *Ex parte Hetherington*, 4 Dea. & C. 217; *Ex parte Gomm*, 2 Mon. & A. 512.

CHAP. XXI.

Exceptions to report of scandal, when to be taken.

Solicitor liable for costs, &c. for scandal.

Nothing material, impertinent or relevant, scandalous.

Sed vide Ex parte Hampson.

Affidavits verifying proceedings at law, not relevant.

Affidavits, &c., before whom to be sworn.

motion was not of course, but that in such a case terms might be imposed, and the motion was granted upon payment of the costs of the day (*a*); but a reference for impertinence can only be made at the hearing (*b*). If a party wishes to except to a report of scandal, the exceptions must be taken immediately after the registrar certifies (*c*); and the solicitor who files an affidavit, which is taken off the file for scandal, is liable for all costs and expenses as between solicitor and client (*d*). Whatever is material to the issue is not impertinent, and whatever is relevant and pertinent, although false or scandalous in its nature, cannot be treated as scandalous (*e*); but an allegation in an affidavit, in opposition to the petition of a clerk of the bankrupt for payment of six months' salary, that if the accounts of the petitioner were taken it would appear that, by his imprudence, property of his employer had been lost, was held to be scandalous, the respondents not having proposed to take the accounts and sustain the charge (*f*). Affidavits verifying proceedings at law, not being evidence which could be read at the hearing of the petition, were ordered to be taken off the file with costs (*g*).

By section 207, any affidavit, declaration or affirmation required to be sworn or made in relation to any matter under this act (of 1861) may be lawfully sworn—

1. In England, Scotland and Ireland, before any court acting in matters of bankruptcy, or before any registrar or taxing master thereof, or before any commissioner for administering oaths in chancery or any of the superior courts of common law at Westminster, or before any officer of the High Court of Chancery, duly authorized to administer oaths in such court, or before a magistrate of the county, city, town or place where any such affidavit shall be sworn :
2. In any colony, island, plantation or place under the dominion of her Majesty, before any court, judge or person lawfully authorized to take and receive affidavits, affirmations or declarations :

(*a*) *Ex parte Knight*, 2 Dea. 75; 3 Mon. & A. 19.

(*b*) *Ex parte Williamson*, 1 Dea. & C. 529; *Ex parte Arnsby*, 2 Dea. & C. 119.

(*c*) *Ex parte Williamson*, 2 Dea. & C. 382.

(*d*) *Ex parte Wake*, Mon. & B. 259; 3

Dea. & C. 246; *Ex parte Kirby*, Mon. 68; *Ex parte Porter*, 2 Mon. & A. 220.

(*e*) *Ex parte Simpson*, 15 Ves. 476.

(*f*) *Ex parte Hampson*, 2 M., D. & D. 462.

(*g*) *Ex parte Barnes*, Mon. & M'A. 9; S. C., *Ex parte Palmer*, 4 Russ. 188.

3. In any foreign parts out of her Majesty's dominions, before a judge or magistrate, his signature being authenticated by the official seal of the court to which he is attached, or by a public notary, or before a British minister, consul or vice-consul:

and every such court, judge, officer or other person, is thereby authorized and required to administer the oath upon any such affidavit, or to take such affirmation or declaration; and all courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or signature (as the case may be) of any such court, judge, officer or other person attached, appended or subscribed to any such affidavit or declaration, or to any other document to be used for the purposes of that act, or of other acts in relation hereto.

By section 210 of the Act of 1861, any affidavit of any prisoner in any of her Majesty's prisons or gaols in England, to be used in any matter under that act, may be sworn before the visiting or other justices, or, if within twelve hours none shall attend, then before the gaoler of such prison or gaol, and every such justice or gaoler is thereby required and authorized to administer the oath upon any such affidavit without fee or reward.

Affidavits by prisoners.

When affidavits are sworn abroad before a magistrate, and attested by a notary public, it is not necessary that the attesting notary should be present when the affidavits are sworn (*h*).

Attesting notary abroad.

The affidavit must not be sworn before the solicitor to the bankruptcy (*i*), or his clerk (*k*); otherwise it cannot be read; but the court, in such a case, has allowed the petition to stand over, in order that the affidavit might be re-sworn.

Affidavits not admissible if sworn before solicitor of bankruptcy or clerk.

By General Order of the 19th October, 1852, rule 23, every affidavit to be used in obtaining, supporting or opposing any petition, or motion, or order for showing cause for or against any order or rule of court, shall be filed with the registrar of the court having the custody of the proceedings to which the same relates, two clear days at the least before the day appointed for the hearing; and no affidavit in reply or in rejoinder is to be used except by leave of the court; and, by rule 24, the registrar, upon any affidavit being left with him to be filed, shall endorse the same with the day of the month and year when the same was so left, and

Rule as to filing affidavits with registrar.

Leave of court to use affidavits in reply.

Registrar to endorse and file affidavits.

(*h*) *Ex parte Bird*, 2 De G., M. & G. 963; 22 L. J., Bcy. 4; sub nom. *Ex parte Reid*.

(*i*) *Ex parte Brockhurst*, 1 Rose, 145; *Re Williams*, 12 W. R. 318.

(*k*) *Ex parte Green*, 1 Glyn & J. 16.

CHAP. XXI.

forthwith file the same, with the proceedings to which the same relates.

Affidavits not to be sworn, &c. till petition answered.

Fresh affidavits, where petition stands over, how far admissible.

Where respondent added by amendment, what affidavits read against him.

Exceptions formerly.

What new evidence now admissible on appeals.

Waiver of irregularity in filing affidavits.

Production of documents referred to.

Examination before commissioner, how far evidence.

An affidavit in support of a petition should not be sworn or filed until after the petition has been answered, otherwise, strictly speaking, it cannot be read (*l*); but the court discountenances the objection, as one of form merely, and will sometimes allow the petition to stand over to have the affidavits re-sworn, and this, without giving, to the party objecting, the costs of the day (*m*); and, if a petition stands over, fresh affidavits may be filed, unless the order contain a special provision to prevent it (*n*); but fresh affidavits are not admissible if the adjournment is for the purpose of examining particular witnesses (*o*); and where a respondent is made a party to the petition by amendment, affidavits filed before the amendment cannot be read against him (*p*). Affidavits in support of a petition of appeal against the decision of the commissioner on the question of the certificate were formerly the only exceptions to this; for, by General Order, 19th October, 1852, rule 64, all affidavits to be made in support of petitions of appeal against the allowance, refusal or withholding of any bankrupt's certificate, or the class thereof, must have been filed at the time of the filing of such petition of appeal. If filed after the petition they could not be read (*q*).

Now no new evidence can be given on appeal without special leave of the Court of Appeal, except of matters which took place before the commissioner on the hearing in the court below. (*See ante, Appeals.*)

An irregularity in the filing of affidavits may be waived by the other party filing affidavits in answer (*r*), particularly if he were apprised of the irregularity at the time (*s*). An affidavit referring to documents does not give the other side a right to call for their production (*t*).

An examination taken before the commissioner will be evidence against the party himself, and may be read if that party alone is concerned in the result of the petition, but not otherwise (*u*); but

(*l*) *Ex parte Northwood*, 2 Rose, 246; *Ex parte Parkes*, Buck, 332; and see *Rex v. Dudman*, 2 Glyn & J. 389; *In re Dickson*, 3 M., D. & D. 686.

(*m*) *Ex parte Brown*, 3 Dea. & C. 496; and see *Ex parte Palmer*, 1 Dea. & C. 490.

(*n*) *Ex parte Worthington*, 3 Dea. 332.

(*o*) *Ex parte Fry*, Mon. 519.

(*p*) *Ex parte Mascarenas*, 1 Dea. & C. 507.

(*q*) *Ex parte Dodson*, Buck, 178.

(*r*) *Ex parte Gilpin*, 1 Glyn & J. 183.

(*s*) *Ex parte Bury*, Buck, 393; *Ex parte Smith*, Ib. 395.

(*t*) *Ex parte Arnsby*, 2 Dea. & C. 192; *Ex parte Parr*, 3 Dea. 607.

(*u*) *Ex parte Wilkes*, 2 Dea. 1; *Ex parte Chambers*, 2 M. & A. 466; *Ex parte Marjoribanks*, De G. 474; *Ex parte Rees*, 9 Jur. 996; De G. 208.

an examination of a witness taken before the commissioner may be read to contradict the subsequent affidavit of the same party on a petition (*x*), and without notice, or giving or tendering to the opposite party a copy (*y*); and on a petition to expunge the proof of a debt, the examination taken at the time of proof, and upon which the commissioner acted when the proof was admitted, may be read on behalf of the assignees (*z*). But an affidavit, stating the substance of an examination before the commissioners, cannot be read as evidence, though it may with a view of showing that an examination of the witness *vivâ voce* is expedient (*a*). When the proceedings are required to be produced in evidence, notice to produce them must be served on the assignees, not on the bankrupt (*b*). If the court is satisfied from the nature of the case or affidavits that an examination *vivâ voce* is necessary, they will order the petition to stand over, and that the witnesses attend the court for examination. Upon a petition to expunge a proof upon a negotiable instrument, the respondent is not bound to produce the instrument without notice on the part of the petitioner so to do, and the court will not, in its absence, attend to the suggestion that it is not stamped if the point is not raised by the petition (*c*). A rule of the Court of Queen's Bench, made in an action pending in that court, cannot be read without being verified by affidavit, and notice of reading it being given to the other side (*d*).

CHAP. XXI.

Where used to contradict subsequent affidavit of same person.

Or on petition to expunge.

Notice to produce proceedings, on whom to be served.

Examination *vivâ voce*, when ordered.

On petition to expunge, notice to produce negotiable instrument.

Rule of Court of Queen's Bench as evidence.

The parties served with the petition or notice of motion may file affidavits in answer. And these also must be filed with the registrar of the court having the custody of the proceedings two clear days before the day appointed for the hearing (Rule 23, General Order, 19th October, 1852, *supra*), otherwise the petitioner will be entitled to require that the petition stand over, to give him an opportunity of filing affidavits in reply, if he should deem it necessary (*e*); and the party guilty of the irregularity will usually have to pay the costs of the day (*f*). The filing an affidavit is not a waiver of any objection to the jurisdiction (*g*).

Affidavits in answer, with whom and when to be filed.

Filing affidavits no waiver as to jurisdiction.

The applicant may file affidavits in reply, for the purpose of Affidavits in

(*x*) *Ex parte Gem*, 2 M., D. & D. 99; *Ex parte Marjoribanks*, De G. 474.

(*y*) *Ex parte Holdsworth*, 1 M., D. & D. 475.

(*z*) *Ex parte Freeman*, 4 Dea. & C. 404.

(*a*) *Ex parte Newall*, 3 Dea. 333; 3 Mon. & A. 666; but see *Ex parte Ely*, 1 M., D. & D. 357.

(*b*) *Ex parte Daly*, 4 Dea. & C. 364.

(*c*) *Ex parte Christie*, 3 M., D. & D. 736.

(*d*) *Ex parte Chambers*, 1 Dea. 197.

(*e*) *Ex parte Radcliffe*, Buck, 489.

(*f*) *Ex parte Corporation of Doncaster*, Buck, 463.

(*g*) *Ex parte Reid*, 1 Dea. & C. 250.

CHAP. XXI.

reply, to what they should be confined.

Leave of court to use.

Examination vivâ voce where parties agree, and vice versa.

Application for, when to be made.

Usual to hear petition before directing examination vivâ voce.

Liberty to examine vivâ voce, subject to order as to costs.

explaining any matter stated in the affidavits of the other party (*h*). And they should be confined to this (*i*); at least, the court will make no order founded upon affidavits in reply, where the affidavits filed on the original application have made out no case for it (*h*). And by Rule 23, General Order, 19th October, 1852, no affidavit in reply or in rejoinder is to be used except by leave of the court.

If both parties agree, a vivâ voce examination of witnesses is of course (*l*); but if they do not agree, the party asking such an examination must show cause (*m*); and if his application be by petition, he ought to state on the face of his petition facts making such a course necessary (*n*). The application for an examination vivâ voce should be made before the case is heard on affidavit (*o*); but this rule is not inflexible, and the party is not estopped by not applying before the hearing (*p*). Indeed, the usual course is to hear the petition; and then, if the court think it expedient, to direct an examination vivâ voce (*q*); and where the petition was heard on affidavits, and the court being divided in opinion, no order was made, and the petitioner subsequently obtained an order ex parte for the petition to be heard on evidence vivâ voce; the order was held to be regular, such an order being in the nature of a rule to show cause; in such a case, a proper course to be taken (*r*); and even on the examination of witnesses vivâ voce, the affidavits filed on the hearing of the petition may be read (*s*). And although there may be a preliminary question which might render the matter of fact in dispute immaterial, yet a party will be at liberty to examine witnesses vivâ voce, undertaking to abide by the order of the court as to costs (*t*). On the petition of one assignee to expunge a proof, where the witnesses are ordered out of court during an examination, the petitioner, although a witness, has a right to remain (*u*); and if on hearing the case on affidavit the court is not satisfied as to the facts, the deponents will be examined vivâ voce (*x*); but where the affidavits

(*h*) See *Ex parte Dodson*, Buck, 178.

(*i*) See *Ex parte Shayle*, Buck, 244.

(*k*) *Ex parte Cundall*, 1 Glyn & J. 37.

(*l*) *Ex parte Biggs*, 3 Mon. & A. 152, 328; *Ex parte Goodbody*, Mon. & C. 283; 4 Dea. 59.

(*m*) *Ex parte Dugard*, 4 Dea. & C. 521; 2 Mon. & A. 27.

(*n*) *Ib.*

(*o*) *Ex parte Baldwin*, 1 Mon. & A. 617; *Ex parte Dugard*, 2 Mon. & A. 26; 4 Dea. & C. 521.

(*p*) *Ex parte Thompson*, 4 Dea. & C. 534; 2 Mon. & A. 40.

(*q*) *Ex parte Tate*, 3 Dea. 516.

(*r*) *Ex parte Ely*, 1 M., D. & D. 547.

(*s*) *Ex parte Biggs*; *Ex parte Goodbody*, supra; *Ex parte Fell*, 3 M., D. & D. 472; *Ex parte Melville*, *Ib.* 474.

(*t*) *Ex parte Melville*, supra.

(*u*) *Ex parte Dugard*, 4 Dea. & C. 524; 2 Mon. & A. 84.

(*x*) *Ex parte Howell*, 1 Dea. & C. 358; *Ex parte Tate*, 3 Dea. 516.

CHAP. XXI.

of the party do not carry his case far enough for his purpose, the court will not adjourn the hearing to enable him to examine witnesses *vivâ voce*, unless by consent. Affidavits as to information derived from a third party, and belief that such information is true, lets in the fact unless contradicted; therefore the refusal of such third party to make affidavit is not sufficient to induce the court to order a *vivâ voce* examination (*y*); the witnesses should be in attendance (*z*). On the examination of witnesses *vivâ voce*, if two assignees, not in adverse interest, appear by different counsel, one only can examine (*a*). If a *vivâ voce* examination is ordered as to the act of bankruptcy, the assignees must give notice of the particular act of bankruptcy on which they intend to rely; but they need not furnish a list of their witnesses (*b*).

Affidavits as to information through third party.

Witnesses to be in attendance.

Notice as to act of bankruptcy, subject of *vivâ voce* examination.

By section 209 of the Act of 1861, no fee shall be payable on the swearing of any oath, or the making of any affirmation or declaration, taken or made in the London court, or in any district Court of Bankruptcy, in any matter of bankruptcy, arrangement or insolvency within the united kingdom, or in any of her Majesty's dominions, colonies or dependencies, and no fee or reward whatever shall be taken or received by any court or magistrate for or in respect of the taking of such oath, or the making of such affirmation or declaration, other than such fee or reward as general orders shall allow.

Fees on taking oaths, &c. in bankruptcy.

By section 211 of the Act of 1861, the bankrupt and his wife are still required to sign and subscribe the declaration (Schedule E.), though they may also be examined on oath.

Bankrupt and his wife to sign declaration.

By section 232 of the Act of 1849, the proper officer of the court in London, and in the several districts in the country shall, on the reasonable request of any bankrupt or arranging debtor, or of any creditor of such bankrupt having proved his debt, or of any arranging debtor, when the debt of the arranging creditor has been admitted in the petition or proved, or on the like request of the attorney of any such bankrupt, debtor or creditor, produce and show to such bankrupt, debtor, creditor or attorney, at such times as the court shall direct, every fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, and petition for arrangement, against or by such bankrupt, and all orders and proceedings under any such fiat, petition or adjudication, and the court shall order the official assignee or officer of the court, as the case may be, to permit such bankrupt, debtor, creditor or attorney to have

Officer of court to produce proceedings, and give copies thereof.

(*y*) *Ex parte Goodbody*, supra.

(*z*) *Ex parte Dickenson*, 2 Dea. & C. 520.

(*a*) *Ex parte Timbrell*, Mon. 506.

(*b*) *Ex parte Foster*, 3 Dea. 175; 3 Mon. & A. 592.

CHAP. XXI.

inspection at all reasonable times of all books, papers and writings relating to the matters of such fiat, petition or adjudication and the estate of the bankrupt or debtor, in the possession of the assignees, or filed in court in such matter, and permit him to inspect and examine the same; and such official assignee or such officer shall provide for any such bankrupt, debtor, creditor or attorney requiring the same an office copy of such fiat, petition or other proceeding, books, papers and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum or rate of charge as may be authorized in that behalf.

Sect. 232 of the Act of 1849 extends to case of bankrupt tried for offences against sect. 221 of the Act of 1861.

Sect. 232 of the Act of 1849 not available for impeaching fiat.

Sect. 233 of the Act of 1849 extends to criminal cases.

Powers in aid for obtaining evidence.

Courts of Bankruptcy in England to be auxiliary for taking affidavits to be used elsewhere.

Provisions of 17 & 18 Vict. c. 34, as to attendance of witnesses out of jurisdiction, extended to Court of Bankruptcy.

It has been held, that a bankrupt sent to trial for offences alleged to have been committed by him against the 221st section of the Act of 1861, is entitled under this section to a copy of the proceedings on his bankruptcy (c).

But this section has been held not to entitle a creditor to call for an inspection of the proceedings, for the purpose of enabling him to impeach the validity of the adjudication (d).

It has been held, in a recent case, that sect. 233 of the Act of 1849 applies to criminal no less than to civil cases (e).

See further as to evidence, Chapters on Bankrupt and Assignees.

By section 208 of the Act of 1861, the Court of Bankruptcy in London, and the District Courts of Bankruptcy in England, are authorized and required to administer oaths, or to receive affirmations or declarations upon any affidavit or declaration or affirmation to be used in any matter of bankruptcy or insolvency under prosecution or thereafter to be prosecuted in any court in Scotland, Ireland, or in any colony, island, plantation or place under the dominion of her Majesty, and all such courts shall take judicial notice of any affidavit, declaration or affirmation so sworn or made.

By section 215 of the same act, the provisions of an act passed in the seventeenth and eighteenth years of the reign of her present Majesty, chapter thirty-four, intituled "An Act to enable the Courts of Law in England, Ireland and Scotland to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give Effect to the Service of such Process in any Part of the United Kingdom," shall extend to and the powers thereof shall be exercised by the commissioners of the Court of Bankruptcy.

(c) *Re Tear*, 12 W. R. 1119; 10 L. T., N. S. 878.

(d) *Ex parte Rimell*, 1 De G., M. & G. 491; 1 De G., M. & G., B. C. 91; see

Ex parte Munk, 3 Dea. & C. 233.

(e) *Reg. v. Levi*, 13 W. R. 724; overruling *R. v. Lyons*, 9 Cox C. C. 299.

By section 216 of the same act, the court may direct the examination in Scotland of any person for the time being in Scotland, being a person believed to be capable of giving information in any matter in regard to the acts, estate or dealings of any bankrupt or petitioner within the provisions of this act, and the order for such examination may be directed in Scotland to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and such sheriff may, in like manner as in examinations in any matter in bankruptcy before such sheriff, summon such person to appear before him, at a time and place to be specified in the summons, for examination upon oath, as witness or haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power; and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report either the original books, papers, deeds or documents produced, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as he shall think fit or deem necessary; and in case any person so summoned shall fail to appear at the time and place specified, or appearing shall refuse to be examined or to make the production required, the sheriff shall proceed against such person, as a witness or haver duly cited, and failing to appear or refusing to give evidence, or make production, may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as are allowed to commissioners under appointment from the court of session, and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland. If any objection be stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may dispose of such objection, or, if he think fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

By section 217 of the same act, the court may, in like manner, direct any such examination in Ireland, of any person for the time being in Ireland, being a person believed to be capable of giving such information in any such matter under this act; and such examination in Ireland may be directed to the Court of Bankruptcy in Ireland, which, for the purpose of such examination, and for the production of books, papers, deeds or documents, shall have the

CHAP. XXI.
Courts in Scotland to be auxiliary to the court in England in examination of witnesses, &c.

Courts in Ireland, in like manner.

CHAP. XXI.

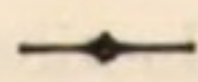
like powers and authorities in all respects as relates to matters within this act as are in the next preceding section given to sheriffs in Scotland, or as might be exercised by such court in the case of a matter within its own jurisdiction.

Courts in
England to be
auxiliary to
Irish and
Scotch courts.

By section 220 of the same act, the court and the district court in London, and the district courts in the country, shall in like manner be auxiliary, for all purposes of proof of debt, and for the examination of persons and witnesses upon oath, or for other like purposes, to the courts acting in matters of bankruptcy or insolvency in Scotland and in Ireland, and also to any court acting in such matters in any colony, island, plantation or place under the dominion of her Majesty, or to any British judge elsewhere so acting.

Section 21 of the Act of 1849 is almost to the same effect, but not quite so extensive; it is still in force, but all the powers given by it are also given by the 220th of the Act of 1861, so that it is sufficient here to refer to it merely.

Under section 226 of the Act of 1861, the court has power to commit persons disobeying its orders, and this power has been exercised in the case of a witness who, having refused to answer and to pay costs, which he had been ordered to pay, was imprisoned by warrant (*f*).



3. CRIMES AND PENALTIES.

Officers of
Court of
Bankruptcy,
&c. taking fees
improperly.

By section 43 of the Act of 1861, if any judge, commissioner, registrar, accountant, master, official assignee, clerk or any other officer of the courts of bankruptcy, or of any county court, acting in matters under that act, shall, for anything done or pretended to be done under the act, or under colour of doing anything thereunder, fraudulently and wilfully demand or take, or appoint or allow any person whatsoever to take, for him or on his account, or for or on account of any person by him named, or in trust for him or for any other person by him named, any fee, emolument, gratuity, sum of money or any thing of value whatsoever, other than is allowed by that act, such person, when convicted thereof, shall forfeit and pay the sum of five hundred pounds, and be rendered incapable, and is thereby rendered incapable, of holding any office or place under her Majesty.

(*f*) *Re Towsey*, 10 L. T., N. S. 620.

The only clause which in any way determines how this penalty is to be enforced is the 227th section of the Act of 1861; and according to that all sums of money forfeited under that act, &c., may be sued for by the creditors' assignee or trustee, or such other person as the court shall by order direct, &c.; but it is presumed that the cases in which the creditors' assignee or trustee is to sue under sect. 227 are cases in which the penalty has been incurred in the matter of some specific bankruptcy, and not cases of general breach of duty like that mentioned in the section under comment (the 43rd). If this be so, there seems to be no means given for the recovery of the penalty under this section, except suit by such person as the court by order shall direct, which would answer well enough where the malfeasance was committed by an inferior officer, but not where committed by the judge or commissioner himself, who is the court. However, it is to be hoped the contingency is so remote as hardly to require mention. The more simple course would have been to have made the offence of taking such fee or gratuity a misdemeanor, punishable by fine or imprisonment, and to have left the matter to the criminal law of the country. It is worthy of remark that by this clause the forfeiture is incurred, so far as the words go, not by the act, but by the conviction, so that to bring the case within the 227th section, and to enable the assignee to sue, the conviction seems to be a condition precedent, and yet no means are provided for indicting or convicting. It would appear, therefore, to be somewhat doubtful whether the clause is capable of being enforced at all.

CHAP. XXI.

Mode of enforcing penalty.

By section 44 of the same act, if any such judge, commissioner, officer or person shall fraudulently do, commit or connive at any fraudulent act or practice in relation to any stamp used or required to be used in any matter under the act, or to any fee or sum of money collected, or which ought to be collected by means of any such stamp or otherwise, or shall be guilty of any fraudulent act, neglect or omission, whereby any fee, which ought to be collected by means of such stamp or otherwise, shall be lost or the payment thereof evaded, such judge, commissioner, officer or person so offending shall be liable to be dismissed from his office or employment.

Penalty for fraud, &c. as to stamps.

By section 54 of the same act, all persons wilfully and corruptly swearing or affirming falsely before a registrar acting under the act are rendered liable to the penalties of perjury.

Witnesses guilty of perjury.

By section 145, wilfully false declarations for proof of debt or False declara-

CHAP. XXI.
 tions for proof
 of debt, &c.
 Forging signa-
 ture of com-
 missioner, seal
 of court, &c.

false statements of debt and account are made misdemeanors punishable as perjury.

By section 205 of the same act, if any person shall forge the signature of any commissioner, registrar, or of the master or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such commissioner, registrar, master or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under the act of the session of parliament of the eighth and ninth years of the reign of her present Majesty, chapter one hundred and thirteen.

The penalty by the act mentioned is seven years' transportation, or imprisonment from one to three years, with hard labour; but as transportation is now abolished, of course the penalty will be the substituted term of penal servitude.

The offences, which not being misdemeanors, may yet be visited with punishment on a bankrupt's application for his order of discharge, under the 159th section of the Act of 1861, have already been noticed in treating of the order of discharge. There remains, however, to treat of misdemeanors under the act, which are defined by section 221. That section is divided into eleven clauses, which are set out and commented on in order below.

Persons guilty
 of misde-
 meanors and
 penalties for.

“ From and after the commencement of this act, any bankrupt
 “ who shall do any of the acts or things following, with intent to
 “ defraud or defeat the rights of his creditors, shall be guilty of a
 “ misdemeanor, and shall be liable, at the discretion of the court
 “ before which he shall be convicted, to punishment by imprison-
 “ ment for not more than three years, or to any greater punish-
 “ ment attached to the offence by any existing statute :

“ 1. If he shall not upon the day limited for his surrender, and
 “ before three of the clock of such day, or at the hour and
 “ upon the day allowed him for finishing his examination,
 “ after notice thereof in writing, to be served upon him per-
 “ sonally or left at his usual or last known place of abode
 “ or business, and after the notice herein directed in the
 “ London Gazette, surrender himself to the court (having

“no lawful impediment allowed by the court), and sign
 “or subscribe such surrender, and submit to be examined
 “before such court from time to time.”

CHAP. XXI.

Upon the law appertaining to the bankrupt's surrender remarks have been already made in the Chapter on the Bankrupt, which see, *p.* 901 *et seq.*

The non-surrender to be criminal must of course be strictly within the terms of the clause. So, where service had been prevented without any default of the bankrupt, he was held to be not guilty (*d*).

Sect. 221,
 clause 1, being
 penal, con-
 strued strictly.

It would seem by this clause necessary to prove, in addition to the fact of non-surrender, that it was with intent to defraud or defeat the rights of creditors, but, under sect. 251 of the Act of 1849, it was held that the legal presumption would be, that the fact of not surrendering was itself evidence of such an intent, and would throw on the bankrupt the onus of clearing himself (*e*).

But onus of
 proof, as to
 intent to
 defeat, &c.,
 upon bankrupt
 not surren-
 dering.

Clause 2 of the 221st section is as follows:—

“2. If he shall not upon his examination fully and truly dis-
 “cover, to the best of his knowledge and belief, all his
 “property, real and personal, inclusive of his rights and
 “credits, and how and to whom and for what considera-
 “tion, and when he disposed of, assigned or transferred
 “any part thereof, except such part as has been really and
 “*bonâ fide* before sold or disposed of in the way of his
 “trade or business, if any, or laid out in the ordinary ex-
 “pense of his family, or shall not deliver up to the court,
 “or dispose, as the court directs, of all such part thereof
 “as is in his possession, custody or power, except the
 “necessary wearing apparel of himself, his wife and chil-
 “dren; and deliver up to the court all books, papers and
 “writings in his possession, custody or power, relating to
 “his property or affairs.”

Both these offences were felonies under the older law, as were also the acts provided against by the next clause if committed after adjudication. Under the clause in 6 Geo. 4, c. 16, s. 112, similar to that last set out, it had been held, that the bankrupt was not indictable for concealing his books, &c., until after he had concluded his final examination, for till then he had a locus penitentiae; and when the examination is adjourned sine die, the indictment will not lie (*f*).

(*d*) *Ex parte Patch*, 31 L. T. 319.

(*e*) *R. v. Hughes*, 1 Fost. & Fin. 726.

(*f*) *Rex v. Walters*, 5 Car. & P. 138.

CHAP. XXI.

In another case the indictment charged that a bankrupt was possessed of certain real estate, and that upon his examination being sworn, he feloniously did not then and there discover when he disposed of, assigned and transferred the said real estate, and it was held bad, because it did not appear by the indictment that he ever had disposed of the property (*g*). It does not appear that these decisions have been ever overruled.

Court may, under sect. 120 of the Act of 1861, give directions as to custody, &c. of books, &c.

Bankrupt, under sect. 105 of the Act of 1849, bound to deliver up and discover books, &c.

As to the delivery of books, papers, &c., it has been already remarked, that, by the 120th section of the Act of 1861, the court is empowered to give such directions as it may deem expedient with respect to the custody and inspection thereof, and may authorize the official assignee to have the custody thereof or of any part thereof. It has also been observed that the 105th section of the Act of 1849 has not been expressly repealed, which enacted, that forthwith after the insertion of the notice of adjudication in the Gazette, or, if the bankrupt, before the expiration of the time allowed for showing cause against the adjudication, surrendered himself and gave consent to such insertion, then forthwith after such surrender the bankrupt should (if thereto required by the official assignee) deliver up to the official assignee upon oath before the court, or before a master ordinary or extraordinary in Chancery (*h*), or justice of the peace, all books of account, papers and writings relating to his estate in his custody or power, and discover such as were in the custody or power of any other person, and that if he refused the commissioners might commit him to prison, there to remain until he should conform to the satisfaction of the commissioners or of the Lord Chancellor (*i*).

Clause 3, sect. 221, provides as follows:—

Concealment, &c. of property by bankrupt.

“3. If he (the bankrupt) shall, after adjudication, or within
“sixty days prior to adjudication, with intent to defraud
“his creditors, remove, conceal or embezzle any part of his
“property to the value of ten pounds or upwards.”

Under the former law, where an article of small value, except for the sake of family recollections, was concealed by the bankrupt, the offence, although not amounting to a criminal act within the statute, was yet deemed sufficient to cause a suspension of his certificate for eighteen months without protection (*k*).

In this (clause 3) and some of the subsequent clauses, and in the

(*g*) *Reg. v. Harris*, 13 Jur. 990; 19 L. J., M. C. 11.

(*h*) Masters extraordinary are now abolished in England; affidavits are sworn in lieu before commissioners for

administering oaths in Chancery; see 16 & 17 Vict. c. 78.

(*i*) See *Ex parte Bradley*, 1 Rose, 202.

(*k*) *Ex parte Warwick*, 6 De G., M. & G. 749.

similar provisions in the Act of 1849, the tendency of the later enactments to make the bankruptcy relate to the adjudication only, and not to the act of bankruptcy, is obvious; for if the bankrupt keep the act of bankruptcy concealed, and remove, conceal or embezzle his property to the value of more than 10*l.*, with intent to defraud his creditors, yet if not adjudicated a bankrupt within sixty days he is innocent; if discovered, however, and adjudicated a bankrupt within the sixty days, he is guilty of an offence punishable with three years' imprisonment.

Concealment, &c. of property criminal, if within sixty days before fiat.

Clauses 4, 5 and 6 of sect. 221 relate to the following offences, viz. :—

“ 4. If any person, having to his knowledge or belief proved a
“ false debt under his bankruptcy, shall fail to disclose the
“ same to his assignees, within one month after coming to
“ the knowledge or belief thereof:

Proving false debts.

“ 5. If he shall, with intent to defraud, wilfully and fraudulently
“ omit from his schedule any effects or property whatso-
“ ever:

Omitting property from schedule.

“ 6. If he shall, after the filing of the petition for adjudication,
“ with intent to conceal the state of his affairs, or to defeat
“ the object of the law of bankruptcy, conceal, prevent or
“ withhold the production of any book, deed, paper or writ-
“ ing relating to his property, dealings or affairs.”

Concealment of books, &c.

An offence similar to those here enumerated, though not criminally cognizable, was aimed at by sect. 256, clause 8, of the Act of 1849, which made it imperative on the commissioner, if the offence was proved, to refuse or suspend the bankrupt's certificate, without protection.

Clause 7 of the 221st section of the Act of 1861 is as follows:—

“ 7. If he shall, after the filing of the petition for adjudication,
“ or within three months next before adjudication, with
“ intent to conceal the state of his affairs, or to defeat the
“ objects of the law of bankruptcy, part with, conceal,
“ destroy, alter, mutilate or falsify, or cause to be concealed,
“ destroyed, altered, mutilated or falsified, any book, paper,
“ writing or security, or document relating to his property,
“ trade, dealings or affairs, or make or be privy to the
“ making of any false or fraudulent entry or statement in
“ or omission from any book, paper, document or writing
“ relating thereto.

Falsification, &c. of books, &c. with intent to conceal affairs.

On an indictment under sect. 252 of the Act of 1849, for making false and fraudulent entries in a book of account, with intent,

CHAP. XXI.

&c., it was found specially that the bankrupt made a false book in which he entered many false accounts of receipts and payments with intent to deceive his creditors as to the state of his accounts, and to prevent the examination and investigation of them in the due course of bankruptcy, and to save him from having to account for the deficiency appearing in the genuine account; but also that it was not done with intent to defraud the creditors of any money or property, or to conceal any money or property or to prevent them from recovering or receiving any part of his estate, or to conceal any misappropriation or preference by him: and it was held, that this was equivalent to a verdict of not guilty (*l*).

It is hardly to be doubted that such a verdict would be a conviction under the new enactment, as the intent now made criminal is an "intent to conceal the state of his affairs," "or to defeat the objects of the law of bankruptcy," and the former intent was found by the jury, if not the latter. (*See Act of 1849, section 256, clauses 1 and 2 (m).*)

Presumed
object of bank-
ruptcy law,
equal division
of property.

The object of the law of bankruptcy within the meaning of these sections is presumed to be the fair and rateable distribution of the property of the bankrupt among his creditors.

The offence described by clause 8 of sect. 221 of the Act of 1861 is:—

Mortgage, &c.
by bankrupt
with fraudulent
intent.

★

"8. If, within the like time, he shall, knowing that he is at the
"time unable to meet his engagements, fraudulently and
"with intent to diminish the sum to be divided amongst
"the general body of his creditors, have made away with,
"mortgaged, encumbered or charged any part of his pro-
"perty, of what kind soever, or if after adjudication he
"shall conceal from the court or his assignee any debt due
"to or from him."

Offence within
clause 8, con-
templates divi-
sion of property
contrary to law
of bankruptcy,
semble.

It is very difficult to say what will, under this clause, be held fraudulent, but it is presumed that a mortgage, &c., to be fraudulent, must be given without valuable consideration, and without pressure of any kind from the creditor, *mero motu* of the debtor, and must be a charge in favour of some one or more creditors in a different mode of distribution from what would have been made by the law in bankruptcy (*n*).

(*l*) *R. v. Ingham*, 29 L. J., M. C. 18, C. C. R.; 8 Cox C. C. 240; 1 Bell C. C. 181; 6 Jur., N. S. 55.

(*m*) See *Ex parte Stephanhoff*, 3 Jur., N. S. 967.

(*n*) See *Bourne v. Graham*, 2 Jur., N. S.

1225; *Davison v. Robinson*, 3 Jur., N. S. 791; *Strachan v. Barton*, 11 Exch. 647; 25 L. J., Exch. 182; *Mogg v. Baker*, 4 M. & W. 348; see ante, Fraudulent Preference.

The expression is “with intent to diminish the sum” to be divided amongst the *general body* of his creditors, in contrast to an individual creditor. It seems that this clause is meant to meet cases of fraudulent preference; as to which remarks are made, *ante*, p. 429 *et seq.*

If there is any contract to give security to a given creditor, or anything in the nature of a duty pre-existing, then the mere fact of impending bankruptcy will not render it fraudulent (*o*). It is not necessary, however, to make such a security fraudulent as regards the debtor that the creditor should have any knowledge of or privity to the fraud (*p*).

Preference not fraudulent, where.

Privity of creditor preferred, not an ingredient.

An act of fraudulent preference was not under the former law criminally cognizable, but was a ground upon proof of which the commissioner was bound, without discretion, to refuse or suspend the bankrupt's certificate, without protection (*q*): (see section 256 of the Act of 1849, clause 4.) The other acts mentioned in the clause just set out, or acts closely analogous, fell under the same section of the Act of 1849, clause 5.

Fraudulent preference formerly ground for refusal, &c. of certificate.

Clause 9, sect. 221 of the Act of 1861, relates to the following offence:—

“9. If, being a trader, he shall, under his bankruptcy, or at any meeting of his creditors within three months next preceding the filing of the petition for adjudication, have attempted to account for any of his property by fictitious losses or expenses.”

Bankrupt attempting to account for property by fictitious losses, &c.

This offence was also within the 256th section of the Act of 1849, clause 6.

The remaining offences enumerated in sect. 221 of the Act of 1861, are described in the 10th and 11th clauses, as follows, viz.:—

“10. If, being a trader, he shall, within three months next before the filing of the petition for adjudication, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, have obtained on credit from any person any goods or chattels with intent to defraud:

Obtaining goods on credit with intent, &c.

(*o*) *Harris v. Rickett*, 4 H. & N. 1; 28 L. J., Exch. 197; *Ex parte Assignees of Kindred*, 29 L. T. 250; *Payne v. Hornby*, 25 Beav. 280; *Edwards v. Glyn*, 28 L. J., Q. B. 350; see *ante*, p. 431.

(*p*) *Bourne v. Graham*, 2 Jur., N. S. 1225.

(*q*) There was some doubt on this

clause, whether it was compulsory on the court, if it refused the certificate absolutely, to refuse protection also; in some cases, therefore, the Lords Justices have granted an order of protection quantum valeat, leaving the efficacy of the order to be tried at law on the arrest of the bankrupt. *Ex parte Nicholson*, 29 L. J., Bcy. 1.

CHAP. XXI.

Pledging, &c.
goods obtained
on credit and
not paid for.

“ 11. If, being a trader, he shall, with intent to defraud his
“ creditors, within three months next before the filing of
“ the petition for adjudication, pawn, pledge or dispose of,
“ otherwise than by *bonâ fide* transactions in the ordinary
“ way of his trade, any of his goods or chattels which have
“ been obtained on credit and remain unpaid for.”

These clauses nearly correspond with the 253rd section of the Act of 1849, but the important words are introduced into the 11th clause, viz., “ pawn, pledge,” which were not in the former enactment under the former act.

Fraudulent
obtaining, &c.
under sect. 253
of the Act of
1849.

It was held, that to constitute a fraudulent obtaining of goods under the 253rd section, it was necessary that the bankrupt should have obtained the goods by means of representations, which he knew to be false at the time he made them, that he was carrying on business and dealing in the ordinary course of trade, and that he required the goods for the purpose of such business; and the representations must have been made by him, it was not sufficient to prove that he received the goods from a seller, who, by urgent persuasion, induced him to purchase them (*r*).

Where a trader within the three months obtained goods on approval and pawned them, and afterwards obtained credit for them, he was held not guilty under this clause (*s*).

Offence must
have been
within three
months before
filing of peti-
tion.

It had also been held, that the offences to be complete must have been committed within three months of the filing of a petition for adjudication, and that the indictment could not be supported by showing them to have been committed within three months before the filing of a petition for arrangement under the 211th section of the Act of 1849, though the arrangement having failed, an adjudication was made upon the proceeding (*t*).

There is also a clause in the 256th section (clause 3) of the Act of 1849, which corresponded to some extent with these last two clauses; it runs thus: “ If the bankrupt shall have contracted any of his debts by any manner of fraud or false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors (*u*).

Ex parte
Manico.

Where the usual course of dealing carried on by the bankrupt,

(*r*) *R. v. Boyd*, 5 Cox C. C. 502.

(*s*) *R. v. Lyons*, 9 Cox C. C. 299.

(*t*) *R. v. Powell*, 9 Cox C. C. 134.

(*u*) *Ex parte Holderness*, 5 Jur., N. S.

904; *Ex parte Leslie*, 25 L. J., Bcy. 37; 2 Jur., N. S. 822; *Re Johnson*, 1 L. T., N. S. 76; *Re Gray*, 32 L. T. 303.

who had traded without capital, had been to purchase goods, and immediately afterwards to raise money by pledging them, and it appeared that this was done not for a dishonest purpose, but in accordance with the custom in his trade, and with the bonâ fide expectation of being able afterwards, on a rise of the price of the goods in the market, to redeem and sell them at a profit; it was held, that this was not equivalent to the offence of contracting debts "by any manner of fraud or by means of false pretences" within the meaning of the 256th section of the Bankrupt Law Consolidation Act, 1849(*x*).

It was held under the Act of 1849, that the 256th section was to be strictly construed, and if only one of the offences therein enumerated had been committed, it was not imperative on the court to award the extreme penalty there imposed(*y*).

A fortiori the new clauses must be strictly interpreted.

Forms are given in the schedules to the County Court Order of the 1st July, 1863, of a conviction of the bankrupt of a misdemeanor on trial before the judge himself, without jury, under section 159, *ante*, schedule 75; of conviction by verdict before the judge, schedule 76; and of warrant of committal on conviction, schedule 77.

In proceeding for misdemeanor against a bankrupt several courses are open under the 159th section before mentioned. The court may, if the bankrupt consents, and if the court sees fit(*z*), direct a statement of the charge to be delivered to the bankrupt and appoint a day for trying him before itself, and if the bankrupt require it, may summon a jury for the purpose, and direct the creditors' assignee or the official assignee, or any of the creditors, to prosecute. Forms are also given in the schedules to the County Court Order of the 1st July, 1863, of the statement of the charge above mentioned, schedule 71; of the high bailiff's affidavit of delivery of the same to the bankrupt, schedule 72; pleas to the statement, schedule 74; and of the appointment of a prosecutor, schedule 73. The court may also, instead of trying the bankrupt, direct the bankrupt to be prosecuted before one of the ordinary courts of criminal jurisdiction.

For the latter purpose, by section 222, if it shall at any time appear to any court under the Act of 1861, that the bankrupt has

Prosecution for misdemeanor under sect. 159 of the Act of 1861.

Bankrupt may be tried before Court of Bankruptcy with or without a jury;

or Court of Bankruptcy may hand over prosecution to criminal courts.

Jurisdiction, &c. of commis-

(*x*) *Ex parte Manico*, 17 Jur. 359; 3 De G., M. & G. 502; 1 De G., M. & G. B. C., 270; 22 L. J., Bcy. 41.

(*y*) *Ibid.*

(*z*) *Ex parte Dobson, Re Wilson*, 32 L. J., Bcy. 1; 11 W. R. 330; 7 L. T., N. S. 815; 1 N. R. 75.

CHAP. XXI.

sioners in
respect of
offences speci-
fied in sect.
221.

been guilty of any of the offences in the next preceding section set forth, such court shall have and may exercise such jurisdiction, rights, powers and privileges, for the summoning, apprehending, committing, remanding, bailing and otherwise proceeding in respect of such bankrupt, as are exercised by and vested in her Majesty's justices of the peace in respect of persons, against whom a charge or complaint shall have been made, before any one or more of the said justices in respect of any felony or indictable misdemeanor committed within the limits of the jurisdiction of such justice or justices; and all the provisions of the act of the session of parliament of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-two, shall, with such variations as the nature of the case may require, extend and apply to the court, and to the commissioners of the London and other district Courts of Bankruptcy, and to the judges of the county courts acting in matters under this act, and their proceedings, as well as to justices of the peace and their proceedings.

Court may
appoint pro-
secutor.

Costs of prose-
cution.

By section 223, the court may direct that the creditors' assignee, or, if there be no creditors' assignee, the official assignee, or any of the creditors of the bankrupt, shall act as the prosecutor in respect of such offence, and shall give to such assignee or creditor a certificate of the court's having so directed, which certificate shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production of such certificate the costs of such prosecution shall be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction, unless such last-mentioned court shall specially otherwise direct, and when allowed by any such court, such sum so allowed shall be ordered by the said court to be paid and borne in all respects in the same manner as the expenses of prosecutions for felonies are now paid and borne, and the same shall be paid and borne accordingly; and any expenses incurred by such prosecutor, other than those so defrayed in accordance with the next following clause, shall be paid out of the account intituled "The Chief Registrar's Account."

Discretion of
commissioner
as to directing
prosecution.

It has been decided under this section, that the Court of Appeal will not interfere with the discretion of a commissioner who has directed the prosecution of a bankrupt before he has been examined, or has had an opportunity of answering the charge against him (z); and an order for prosecution is good, though it only state that the

(z) *Ex parte Levi*, 13 W. R. 209.

bankrupt has committed "one or more of the offences" specified in sect. 221, without setting out the specific charge (*a*). CHAP. XXI.

It has also been held, under this section, that an application for an order to prosecute should be *ex parte* (*b*), but the court has no power under the 223rd section to direct a bankrupt accused of a misdemeanor to be taken before a justice of the peace, or to order the costs of a preliminary examination before a justice of the peace to be paid out of the estate (*b*). Application to prosecute, how made.

By section 224, the court may direct the assignees to lay the papers before the attorney-general (or the solicitor-general during a vacancy in the office of attorney-general) for his direction thereon, either while the bankruptcy is pending before the court or when it has been brought to a conclusion. Power of directing reference to attorney-general.

By section 225, in any indictment or information for any misdemeanor under this act it shall be sufficient to set forth the substance of the offence charged, without alleging or setting forth any debt, act of bankruptcy, petition or adjudication, or any summons, warrant, order, rule or proceeding of or in any court acting under this act. Indictment.

Sect. 226 enacts, that if any person shall wilfully disobey any rule or order of the court, duly made for enforcing any of the purposes or provisions of the act, the court may, by warrant in the form contained in the Schedule (F.) to the act annexed, commit the person so offending to the Queen's prison, or to the common gaol of any county, city or place where he shall be found, or where he shall have usually resided, there to remain without bail or mainprize, until such court, or the Court of Appeal in Chancery sitting in Bankruptcy, shall make order to the contrary. Power to commit persons disobeying order of court.

Under this section a witness who refused to answer, and to pay costs which he had been ordered to pay, was imprisoned by warrant (*c*).

The court will not, under sect. 225, order a prosecution for the mere purpose of putting a doubtful state of facts into a course of elucidation, it will only act on a *prima facie* case actually made out against the bankrupt, such as if unrebutted and unexplained would be sufficient to convict him (*d*). So, in *Ex parte Still*, where the misdemeanor charged was the fraudulent omission of a bankrupt's property from his schedule, and the property in question had been No prosecution ordered except on strong *prima facie* case.

(*a*) *Ex parte Levi*, 13 W. R. 209.

(*b*) *Ex parte Hyams*, 11 L. T., N. S. 390.

(*c*) *Re Towsey*, 10 L. T., N. S. 620.

(*d*) *Ex parte Strickland, Re Still*, 32

L. J., Bcy. 12; 9 Jur., N. S. 7; 1 N. R.

112; *Ex parte Dobson*, 32 L. J., Bcy. 1;

11 W. R. 330; 7 L. T., N. S. 815; 1 N. R.

75.

Ex parte Still.

CHAP. XXI.

Where prosecution without direction of court, no costs out of chief registrar's account.

Order for costs out of assets of bankrupt.

Ex parte White.

Ex parte Scholefield.

the subject of a sale said to have been collusive and invalid, which, if valid, would have divested the property out of the bankrupt, and would have left it no longer his assets at the date of the bankruptcy, the Lord Chancellor refused to order a prosecution until it should first have been conclusively established that the sale was collusive and the property of the bankrupt at his bankruptcy, as till that had been proved there was no *prima facie* case of misdemeanor made against the bankrupt; although the facts were in the highest degree suspicious. The court has no jurisdiction to order the costs of a prosecution undertaken without its direction to be repaid out of the chief registrar's account, even though the prosecution has been successful, but it may order payment out of the assets of the bankrupt if they are sufficient (b). Under the Act of 1849, section 255 (now repealed), a power existed to order the costs of a prosecution directed by the court to be paid out of the assets of the bankrupt, and if they were not sufficient, out of the chief registrar's account, but none of such costs were to be defrayed by the county; and if the assignees applied for leave to prosecute, the court was slow, even though at the instance of other creditors (c), in interfering with their discretion in conducting the prosecution.

Where the bankrupt was indicted for a conspiracy to obtain goods by false pretences, and by his affidavit stated that he was innocent of the charge, and that if he was convicted the estate would be greatly damnified, as the prosecutor would be enabled to prove for a large sum under the fiat, the petition prayed an order upon the assignees to advance the bankrupt 100*l.* out of the estate to defend himself against the indictment; it was held, that the court could make no order for an advance unless with the express consent of all the assignees (d).

Under the Act of 1849, the costs of a prosecution which failed, have been ordered (under section 255) to be paid out of the chief registrar's account, the assets of the bankrupt being deficient (e): but the court refused to give a certificate in aid of an application to parliament to have such costs paid out of a parliamentary grant, as the law on the matter was express as to the fund which should pay them (f); nor will the court allow even out of a bankrupt's estate the costs of the bankrupt incurred in successfully resisting criminal proceedings against him (g).

(b) *Ex parte Davis*, 2 N. R. 561; see also *Re Ballard*, 9 L. T., N. S. 399.

(c) *Ex parte White*, 29 L. T. 345.

(d) *Ex parte Scholefield*, 2 M., D. & D.

644; 6 Jur. 224, 977.

(e) *Ex parte Lillicrap*, 28 L. T. 376.

(f) *Re Tucker*, 32 L. T. 78.

(g) *Re Woollard*, 12 W. R. 550.

In criminal proceedings formal proof need not be given of the bankruptcy, *i. e.* by proving the trading, the act of bankruptcy, the petitioning creditor's debt, and the adjudication; the 233rd section of the Act of 1849 applying in criminal than in civil cases (*h*); it having been held in a late case, that the bankrupt having been in the kingdom at the date of adjudication, and having taken no steps to dispute the advertisement, it was conclusive against him, even on a trial for misdemeanor under sect. 221 of the Act of 1861 (*h*).

CHAP. XXI.

Sect. 233 of the Act of 1849 applies to criminal as well as civil cases.

By section 274 of the Act of 1849, a gaoler refusing to receive a bankrupt or other person committed to his custody under this act, or permitting him to escape, shall forfeit 500*l*.

Gaoler refusing to receive bankrupt, &c.

By section 227 of the Act of 1861, all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath, affirmation or declaration thereby directed or authorized, may be sued for by the creditors' assignee or trustee, or such other person as the court shall by order direct, in any of her Majesty's superior courts of record.

Monies forfeited under Act of 1861, how recoverable.

The 275th section of the Act of 1849 is not repealed, which is to the same effect as that just cited, but enacts, moreover, that penalties recovered shall, after deducting costs of suit, be paid to the chief registrar's account.

Recovered monies to be paid to chief registrar's account.

By section 228 of the Act of 1861, the several provisions contained in the one hundred and fourteenth, one hundred and fifteenth, one hundred and sixteenth and one hundred and seventeenth clauses of the act passed in the ninth and tenth years of her Majesty, chapter ninety-five, shall apply to all officers of the court and of the county courts sitting in bankruptcy, who act in execution of warrants and orders of such courts, as if those several clauses had been thereby enacted.

Sects. 114, 115, 116 & 117 of 9 & 10 Vict. c. 95, apply to officers of Courts of Bankruptcy.

4. ENFORCING ORDERS.

The court enforces its orders, as has been before said, through the messenger, so far as seizing goods is concerned, and he is indemnified for acting under its warrant: section 107, Act of 1849. It can enforce its orders also in the same manner as any other court of record by attachment and imprisonment for contempt, and it has powers of imprisonment by warrant in certain cases mentioned before. Its orders, when for the payment of money, have,

Court enforces orders through messenger, or by imprisonment, &c.

Have force of

(*h*) *Reg. v. Levi*, 13 W. R. 724, overruling on this point *R. v. Lyons*, 9 Cox C. C. 299.

CHAP. XXI.

judgment, as
to lands on re-
gistration.

after due registration, the same effect upon lands as judgments of the superior courts of common law or decrees in Chancery.

By section 228 of the Act of 1861, above mentioned, the officers of the court are protected from assault while acting under the warrant of the court or from rescue of goods taken by them under such warrant, and are placed under penalties for neglect in executing the warrant of the court, or abuse of their authority or misconduct in exercising it.

Powers of
courts in aid of
each other to
enforce orders.

Besides these powers of enforcing its own orders, the Courts of Bankruptcy or Insolvency in divers parts of the Queen's dominions have mutual powers of enforcing one another's orders, and carrying out one another's process, given by the Act of 1861.

Distribution of
debtors' pro-
perty in the
colonies.

By section 218 of the Act of 1861, before noticed (see Chapter on Bankruptcy of Debtors in India and elsewhere), provisions are made for seizing and distributing the property of debtors bankrupt or insolvent in those countries, and in other foreign dominions of her Majesty.

Orders in
England en-
forceable in
Scotland or
Ireland;

By section 219 of the same act, any order made by the court, or by any court in England, acting under the act, in the course of the prosecution of any matter under the act, shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such matter if the residence or place of business of the debtor had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are thereby required to enforce the same; and in like manner orders, interlocutors and decrees made by any court in Scotland, for or in the course of any bankruptcy or insolvency shall be enforced in England and Ireland; and orders made by the court in Ireland for or in the course of any such proceedings shall be enforced in England and Scotland by the Courts of Bankruptcy which would respectively have had jurisdiction in any such matter, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a matter within its own jurisdiction.

and conversely.

Powers in aid
of courts in
England, Ire-
land, &c.

By section 220 before mentioned (see Evidence), and by section 21 of the Act of 1849, also there mentioned, the courts in this country are made reciprocally auxiliary to one another and to the courts in Scotland and Ireland, and the foreign dominions of the crown, for proof of debt, examination of witnesses and other like purposes.



5. NOTICES AND ADVERTISEMENTS.

By section 201 of the Act of 1861, all notices by that act or by General Order, required to be served on any person, shall be sent by post addressed to the last known place of business or abode of such person, subject to such regulations as to registration and otherwise as such General Orders shall direct; but the section in question is not to apply to or affect notices by the act or by any General Order required to be personally served.

Notices to be sent by post.

By section 202, General Orders respecting the form and contents of notices in the London Gazette and otherwise may provide for notices concerning more bankruptcies than one being comprised in one advertisement, and may fix the price to be paid to the printer of the London Gazette for advertisements, which price the said printer is thereby required to receive as such payment.

General Order as to advertisements.

See General Orders, 6th November, 1861, and 19th November, 1861.

6. INTERPRETATION CLAUSE.

As to the definition and explanation of terms:

By section 229 of the Act of 1861, the terms and words herein-after enumerated or explained, wheresoever occurring in this act, shall be understood as hereinafter defined or explained, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such definition or explanation; that is to say,

Definition of terms, &c.

“Annuling” shall mean also “superseding:”

“Annuling:”

“Assignee” shall mean the assignee of the estate and effects of the bankrupt or petitioner, chosen by the creditors; and until such assignee shall be chosen, or where no such assignee shall exist, shall mean the official assignee:

“Assignee:”

“Bank of England” shall mean also all branches or agents thereof:

“Bank of England:”

“Bankrupt” shall mean any person who shall have been under any former acts, or shall be by any court under the provisions of the act, adjudicated bankrupt:

“Bankrupt:”

“Commissioner,” and “Commissioner of the Court of Bankruptcy,” shall include the judge of any county court entitled to act in bankruptcy under the act:

“Commissioner,” &c.:

“Court,” “the court,” “the courts,” shall mean the court in London, or any country district court, or any county court

“Court:”

CHAP. XXI.

acting under the act, according as such several constructions shall be consistent with the context :

“ Court of Bankruptcy :”

“ Court of Bankruptcy” shall mean her Majesty’s Court of Bankruptcy constituted under the act, and the commissioners thereof :

“ Creditor :”

“ Creditor” shall mean also any two or more persons being partners, and incorporated and joint-stock companies :

“ Creditors present at any meeting :”

“ Creditors present at any meeting” shall include creditors who are represented by some person duly authorized by any such creditor in writing, and such authority shall not require a stamp :

“ Gaoler :”

“ Gaoler” shall include the keeper or governor of any gaol or prison :

“ Messenger :”

“ Messenger” shall mean also and include his assistant or assistants, duly authorized by him to act as his deputy or deputies, when acting under order of the court :

“ Metropolitan district :”

“ Metropolitan district” shall mean and include every parish the distance whereof, as measured by the nearest highway from the General Post Office in London to the parish church of such parish, shall not exceed twenty miles :

“ Oath :”

“ Affidavit :”

“ Oath,” “ affidavit,” shall mean and include the declaration or affirmation of any person, whom any Act of Parliament shall have authorized to make such declaration or affirmation in lieu of an oath :

“ Petition in bankruptcy,”
&c. :

“ Petition for adjudication” or “ petition in bankruptcy,” shall mean any petition by or against a debtor for adjudication of bankruptcy ; and where in any Act of Parliament, instrument, document or other proceeding granted, executed, or made before the commencement of the act mention shall have been or shall be made of any fiat in bankruptcy or commission in bankruptcy, such act, instrument, document or proceeding shall be construed as though such fiat or commission had been a petition in bankruptcy under the act, so far as the circumstances will admit :

“ Petitioning creditor :”

“ Petitioning creditor” shall mean the creditor who filed the petition for adjudication :

“ Property :”

“ Property” shall mean and include all the real and personal estate and effects of the petitioner or bankrupt within this realm and abroad (except as therein provided), and all the future estate, right, title, interest and trust of such petitioner or bankrupt in or to any real or personal estate and effects, within this realm or abroad, which may revert, de-

scend, be devised or bequeathed or come, and all debts due or to be due to him, before he shall have obtained his discharge :

CHAP. XXI.

“ Prisoner ” shall mean any person in actual custody within the walls, rules or liberties of any prison in England for any debt, damages, costs, sum or sums of money, or for any contempt by reason of nonpayment of any sum or sums of money or costs :

“ Prisoner : ”

“ Proper county court ” shall mean the county court within the district of which the debtor has resided or carried on business during the six months next immediately preceding the time of filing a petition under the act by or against him, or for the longest period during such six months :

“ Proper county court : ”

“ Sheriff ” shall include sheriff substitute :

“ Sheriff : ”

“ Suit ” shall include action at law and suit in equity or other proceeding :

“ Suit : ”

For the purposes of the act, all persons shall be deemed “ traders ” who prior to the commencement of the act would have been liable to be adjudicated bankrupt under the laws of bankruptcy then in force :

“ Traders : ”

“ United Kingdom ” shall mean the united kingdom of Great Britain and Ireland :

“ United Kingdom : ”

In all cases in which any particular number of days is prescribed by the act, or shall be mentioned in any rule or order of court which shall at any time be made under the act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter week, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

“ Computation of time : ”

As the interpretation clause of the Act of 1849 is expressly repealed, and the Act of 1861 is to be read as part of the former act, the new interpretation must, it would seem, now be applied to expound the earlier act.

Interpretation clause of Act of 1861 applies to Act of 1849, *semble*.

7. REPEAL.

By section 230 of the Act of 1861, the acts and parts of acts set forth in Schedule (G.) to that act to the extent to which they

Acts and parts of acts repealed.

CHAP. XXI.
Reservation of
existing rights.

are therein expressed to be repealed, and all other acts or parts of acts which are inconsistent with the act, are repealed; but such repeal shall not affect any proceeding pending, or any right that has arisen or may arise, or any penalty incurred or that may be incurred, in respect of any transaction, act, matter or thing done or existing prior to or at the commencement of the act, under or by virtue of any of the acts or parts of acts repealed. The attention of the reader is directed to the repeal clauses of the Acts of 1849 and 1854 respectively.

Under Act of
1849, right to
review disal-
lowance of
certificate,
limited to time
named in sect.
207 of that
act.

A reservation of rights, very similar to that made by the repeal clause of the Act of 1861, is contained in the 1st and 4th sections of the Act of 1849. It was, however, held, that the right of a bankrupt, if any, to have the disallowance of his certificate reviewed under the former law at any distance of time was nevertheless limited after the passing of the Act of 1849 to the particular cases and time provided by the 207th section of that Act (*i*). It has been held also, that, notwithstanding the penalty of the refusal of the certificate for gaming had been incurred under the Act of 1849, yet the bankrupt, under the 160th section of the Act of 1861, may receive his order of discharge in spite of the exception of penalties in the repeal clause (*k*). The Lords Justices, also, in one case seemed to doubt whether the repeal of the 256th section of the Act of 1849 did not take away the power of suspending the certificate or order of discharge of a bankrupt whose bankruptcy was pending at the date of the act, he not having been proved to have committed any one of the offences specified in the 159th section of the Act of 1861 (*l*). But it has been distinctly held, that the word "penalties" refers to all penal consequences of acts committed and not only to pecuniary penalties (*m*); and in that case, (*R. v. Smith*,) a bankrupt guilty of not surrendering under the Act of 1849, section 251 (now repealed), was yet convicted after the passing of the Act of 1861, and the conviction was maintained.

Cases as to
effect of repeal
clauses in the
Acts of 1849
and 1861.

Assignees under a second bankruptcy, in which the dividend was less than 15s. in the pound, had acquiesced in the subsequent trading of the bankrupt; it was held that such acquiescence did not bar their rights under the 127th section of 6 Geo. 4, c. 16, as the repeal clause above mentioned did not destroy any rights accruing by virtue of the repealed act, although such rights did not actually vest until after the passing of the Act of 1849 (*n*).

(*i*) *Ex parte Higginson*, 1 De G., M. & G. 204.

(*k*) *Ex parte Matheson*, 31 L. J., Bcy. 23.

(*l*) *Re Bond*, 31 L. J., Bcy. 47.

(*m*) *R. v. Smith*, 9 Cox C. C. 110; 31 L. J., M. C. 105; 8 Jur., N. S. 199; 10 W. R. 273.

(*n*) *Re Bissell's trust*, 2 K. & J. 328; 25 L. J., Ch. 323; 2 Jur., N. S. 370.

Where a petition for arrangement was filed before the 12th of October, 1861, it was held, that the balance sheet was to be in the old form; the proceeding being one pending at the passing of the Act of 1861 (*o*). It has been held, also, that proof for a proportionate part of rent under section 150 of the Act of 1861, may be made in a bankruptcy pending at the passing of the act (*p*).

An insolvent debtor, in contempt for not filing his schedule under his petition in the Insolvent Court, presented a petition for adjudication under the Act of 1861, without any assets, but his petition was dismissed, it being held, that proceedings pending were to be continued under the former law (*q*). So it is held, that the classification of certificates continued for those bankrupts who were adjudicated before the commencement of the Act of 1861, though the certificate-meeting did not take place till after the act came into operation (*r*).

8. LIMIT, COMMENCEMENT AND TITLE.

By section 231 of the Act of 1861, it was provided that the act should not extend to Scotland or Ireland, unless where otherwise expressly provided: and by section 232, that it should commence and take effect from and after the passing thereof, as to the appointment of the officers thereby authorized to be appointed, and as to all other matters and things, from and after the eleventh day of October, one thousand eight hundred and sixty-one, and should be construed, together with so much of "The Bankrupt Law Consolidation Act, 1849," and "The Bankruptcy Act, 1854," as remained unrepealed, as one act, and might be cited for all purposes as "The Bankruptcy Act, 1861."

Act of 1861 not to extend to Scotland or Ireland, except where expressly provided.

To be cited as "The Bankruptcy Act, 1861."

The short titles of the former acts are mentioned in this section.

Section 3 of the Act of 1849 is to the same effect as section 231 of the Act of 1861; the older act was held not in anywise to extend to the colony of New Zealand (*s*).

(*o*) *Re Temple*, 5 L. T., N. S. 369.

(*p*) *Ex parte Watson*, 5 L. T., N. S. 237.

(*q*) *Re Preston*, 5 L. T., N. S. 463.

(*r*) *Re Tallis, Ex parte Elsam*, 5 L. T.,

N. S. 237; *Re Wilson*, *Ib.* 257.

(*s*) *Bunny v. Hart*, 11 Moore Priv. C. C. 189.

APPENDIX.

THE STATUTES.

12 & 13 VICT. c. 106.

An Act to amend and consolidate the Laws relating to Bankrupts.

[1st August, 1849.]

WHEREAS it is expedient to amend and consolidate the laws relating to bankruptcy: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same:

I. That from and after the commencement of this act the several acts and parts of acts set forth in the schedule A. to this act annexed, to the extent to which such acts or parts of acts are by such schedule expressed to be repealed, and every other act or acts, and such parts of every other act or acts, as shall be inconsistent with this act, shall be repealed, except so far as the said acts or parts of acts, or any of them, whether mentioned or included in the said schedule or not, repeal any former act or part of an act, and except also so far as may be necessary for the purpose of supporting any proceedings taken or to be taken under and after the commencement of this act upon any trading, act of bankruptcy, petitioning creditor's debt, fiat, or other proceeding in bankruptcy before the commencement of this act, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this act.

II. And be it enacted, that in citing this act in other acts of parliament, or in any instrument, document or proceeding, it shall be sufficient to use the expression "The Bankrupt Law Consolidation Act, 1849."

III. And be it enacted, that this act shall not extend to Scotland or Ireland, except where otherwise expressly provided.

IV. And be it enacted, that this act, unless where otherwise specially provided, shall commence and take effect from and after the eleventh day of October next; and that from and after the commencement of this act no fiat in bankruptcy shall be issued, but all proceedings in bankruptcy or to found an act of bankruptcy shall and proceedings for arrangement between debtors being traders liable to become bankrupt and creditors may be by virtue of and according to the provisions of this act; and that all proceedings in bankruptcy, and every fiat in bankruptcy and petition for such arrangement, depending at the commencement of this act, shall be proceeded in and brought to a conclusion under the provisions of this act: Provided that every trading, act of bankruptcy, petitioning creditor's debt, or other matter or thing, which before the commencement of this act would have authorized proceedings in bankruptcy, shall after the commencement of this act be sufficient to authorize proceedings in bankruptcy under this act, and nothing in this act contained shall render invalid any proceedings in bankruptcy, or any fiat in bankruptcy, or any petition for arrangement, depending at the commencement of this act, or any proceedings which may have been instituted or taken under or by virtue of such bankruptcy, fiat or petition, or lessen or affect any right, title, claim, demand or remedy which any person now has or hereafter may have under or by virtue thereof, or lessen or affect any right, title,

1.
General
Provisions.

Certain acts and
parts of acts
repealed.

Short title of this
act.

Act not to extend
to Scotland or
Ireland.

Act to commence
11th Oct. 1849;
fiat abolished,
and all procedure
to obtain adjudi-
cation of bank-
ruptcy, &c. to be
under the pro-
visions of this
act.

Joint Stock Companies Winding-up Act, 1848, &c. not to be affected.

In construing former acts, &c. with reference to petition for adjudication under this act, fiat, &c. to be deemed to have issued at the time of filing petition.

2.

Constitution of the Court, &c.

The court of bankruptcy continued for the purposes of this act, and to continue a court of record, &c.

[*Court in London created 1 & 2 Will. 4, c. 56, s. 1; district courts, 5 & 6 Vict. c. 122, s. 59.*]

Number of commissioners acting in London to be reduced to four.

Commissioners may make rules, subject to lord chancellor's approval.

Limits of the bankruptcy districts.

[*Settled, 5 & 6 Vict. c. 122.*]

claim, demand or remedy which any person now has or hereafter may have upon or against any bankrupt against whom any fiat has or shall have been issued, or against any such trader who may or shall have presented such petition, except as in this act is hereafter specially provided: Provided always, that nothing in this act contained shall affect the provisions of the "Joint Stock Companies Winding-up Act, 1848," or any of the acts therein recited, or of any act amending such act, except so far as regards the abolition of the fiat in bankruptcy and the substitution of a petition for adjudication of bankruptcy.

V. And be it enacted, that where, in any act of parliament, instrument, document or other proceeding passed, executed or made before the commencement of this act, mention shall have been or shall be made of any commission of bankruptcy or fiat in bankruptcy, such act, instrument, document or proceeding shall be construed with reference to the proceedings under a petition for adjudication of bankruptcy, as if such commission or fiat had been actually issued at the time of filing such petition.

And with respect to the court, and the jurisdiction thereof, be it enacted,

VI. That the court of bankruptcy shall continue to be a court of law and equity for the purposes of this act, and shall continue to be a court of record; and the records and proceedings of every kind at the commencement of this act in the said court in London, and in the several districts in the country, shall be kept as such records and proceedings in like manner in the court so continued; and the said court and every commissioner thereof shall have and use all the powers, rights, incidents and privileges of a court of record, and all other rights, incidents and privileges, as fully to all intents and purposes as the same are used and enjoyed by any of her majesty's courts of law or judges at Westminster; and each and every of the commissioners for the time being acting in London and in the several districts in the country shall, singly and simultaneously or otherwise as occasion may require, be and form the court for every purpose under this act, or in execution of any duty which may hereafter be imposed on the court, except where otherwise in this act specially provided.

VII. That upon the next two occasions of a vacancy in the office of any commissioner of the court acting in London the vacancies shall not be filled up, and the commissioners acting in London shall in such manner be reduced to four; and the lord chancellor shall have power to direct before which commissioner or commissioners those matters shall be prosecuted which were theretofore prosecuted before the commissioner whose death, resignation, retirement or removal shall have occasioned the vacancy.

Repealed. New provision in same matter, act of 1861, sects. 2 and 18; as to persons substituted for commissioners in certain cases, see *post*, sect. 27, act of 1854, sects. 6—8.

VIII. That the commissioners of the court continued under this act, or any eight or more of them, of whom the senior commissioner shall be one, may from time to time make such rules and orders as they may think fit for the better carrying this act into execution, and as regards the duties to be performed by the chief and other registrars, the accountant, master, clerk of enrolments, official assignees, registrar of meetings and clerks, and by the messengers, ushers and other under officers of the court, and generally for regulating the practice of the court and the forms of proceedings where not provided for in this act; provided always, that no such rules or orders shall be of any force or effect until they shall have been approved by the lord chancellor.

Repealed. New provision for same purpose, act of 1861, sect. 45; as to courts of bankruptcy, sect. 46; as to county courts, except as to fees, which are left under sect. 45, see also act of 1861, sect. 47.

IX. That the limit and extent of the district of the court of bankruptcy acting in London shall be and remain the limit and extent of such district at the time of the passing of this act, and the limit and extent of the districts of the courts acting in the country respectively shall be the limit and extent of such districts respectively as the same are settled and determined at the time of the passing of this act, unless and until such last-mentioned districts shall be altered as herein-

after provided : Provided always, that it shall be lawful for her majesty, with the advice of her privy council, from time to time to alter the limit and extent of such last-mentioned districts or any of them, or to increase the number of the same, as to her majesty, with the advice aforesaid, shall seem fit.

X. That the court shall sit for the despatch of business daily throughout the year, (Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter weeks, and days appointed for Public Fast or Thanksgiving, excepted,) and in London, and in each district in the country, the commissioners of the court, or such of them as occasion may require, shall attend for that purpose : Provided always, that in each district in the country in which there is only one commissioner of the court, such commissioner, or, in his absence from illness or other reasonable cause, the registrar of the court in such district, shall so attend : Provided also, that during the time appointed by order of the lord chancellor for vacations in the several offices of the high court of chancery, the commissioners of the court in London and in the several districts in the country respectively shall have full power and authority to regulate the sittings of the court, and appoint the attendance of such of them as vacation commissioner or commissioners for that purpose as shall appear fit and necessary for the due administration of justice in the said court.

XI. The lord chancellor may from time to time attach the commissioners and registrars acting in the country to such districts as he shall think fit, and, whenever it shall appear to him to be expedient, may order any commissioner acting for any district, whether in town or country, to hold sittings at such places within his district as the lord chancellor may think fit, and may give all necessary directions in that behalf.

XII. That the court, in the exercise of its primary jurisdiction by virtue of this act, shall have superintendence and control in all matters of bankruptcy, and shall hear, determine and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy and claimed by the assignees for the benefit of the creditors, or relating to any acts done or sought to be done by the assignees in their character of assignees by virtue or under colour of the bankruptcy, and also in any matter of bankruptcy whatever as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the court ; and also in any application for a certificate of conformity, and in any other matter (whether in bankruptcy or not) where the court by virtue of this act has jurisdiction over the subject of the petition or application, save and except as may be by this act otherwise specially provided, and subject in all cases to an appeal to such one of the vice-chancellors (*a*) of the high court of chancery as the lord chancellor shall from time to time be pleased to appoint to sit in bankruptcy : Provided always, that if no such appeal shall be entered within twenty-one days (*b*) from the date of any decision or order of the court, and be thereafter duly prosecuted, every such decision or order shall be final ; and that every appeal shall be subject to such regulation in regard to deposit of costs (*c*) as shall by any general rule or order to be made in pursuance of this act be directed (*d*).

(*a*) Altered, 14 & 15 Vict. c. 83, s. 7. Appeal to court of appeal in chancery.

See also act of 1861, sect. 66, as to appeal from county court.

(*b*) See *post*, sect. 233 ; 17 & 18 Vict. c. 119, s. 24. See also act of 1861, sect. 171, as to appeal against order allowing or refusing order of discharge where time is thirty days.

(*c*) See G. O., 19th Oct., 1852, r. 29.

(*d*) As to practice on appeals, see G. O., 12th Oct., 1861, r. 32 ; in county courts, see margin, act of 1861, sect. 66.

XIII. That the vice-chancellor appointed and sitting in bankruptcy as aforesaid shall be and form a court of record, and shall have all the powers of and incident thereto, and may adjourn any sitting from time to time and for such time as may be requisite, and shall have the like power of summoning and compelling attendance, and of examination, and of enforcing obedience to examination and to any order duly made, whether relating to any examination or to any

Country districts may be altered or increased.

[See act of 1861, sect. 5.]

Sittings of the court.

[Repealed. New provisions, act of 1861, sects. 48, 49, 51.]

[See *post*, sect. 27. Act of 1854, sects. 6—8.]

Lord chancellor may attach the commissioners, &c. acting in the country to such districts as he shall think fit, &c.

3.
Jurisdiction,
Primary
and Appellate.

Primary jurisdiction of the court, with appeal to vice-chancellor.

[See ante, sect. 6. Act of 1861, sect. 1 ; G. O., 19th Oct. 1852, rr. 17—30 inclusive.]

Vice-chancellor sitting in bankruptcy to be a court of record, &c.

[Applies to court of appeal, 14 & 15 Vict. c. 83, s. 7.]

Appeals to be brought on by petition, motion or special case.

[*Repealed. See now, G. O., 12th Oct. 1861, r. 32.*]

Vice-chancellor may direct question of fact to be decided by a jury.

[*Repealed. See now, act of 1861, sects. 59, 60.*]

8 & 9 Vict. c. 109. New trial may be moved for.

Decisions, &c. of vice-chancellor to be subject to appeal to the lord chancellor in certain cases.

[*Repealed. See 14 & 15 Vict. c. 83, s. 7, proviso.*]

Appeals, &c. to be entered in office of chief registrar, &c.

[*Applicable to court of appeal in chancery.*]

Appeal to the house of lords.

[*Repealed; but see 14 & 15 Vict. c. 83, s. 10, unrepealed.*]

Lord chancellor, during illness, &c. of any commissioner, may direct another commissioner to act.

[*See also post, sect. 27; 17 & 18 Vict. c. 119, ss. 6—8.*]

During vacation, &c. any commissioner acting in London may act for senior commissioner.

[*Repealed.*]

other matter, and of requiring and compelling the production of books, papers, deeds, writings and other documents, and shall have the like power of commitment, as is by this act given to the court of bankruptcy.

XIV. That all appeals from decisions or orders of the commissioners shall be brought on by way of petition, motion or special case, subject to any general rule or order to be made by the vice-chancellor or by the lord chancellor relating to such appeals.

XV. That the vice-chancellor may, if he think fit, direct any question of fact arising before him to be decided by a jury in London or Westminster, or by a jury before a judge of assize, in manner and form provided in lieu of a feigned issue by an act passed in the parliament holden in the eighth and ninth years of the reign of her majesty, intituled "An Act to amend the Law concerning Games and Wagers;" and after any question so authorized shall have been decided a new trial thereof may be moved for in the court out of which the writ of summons sued out under that act shall have been issued.

XVI. That all decisions and orders of the vice-chancellor shall be subject to an appeal to the lord chancellor on matters of law and equity, or on the refusal or admission of evidence, and on such only; and in all cases of appeal to the lord chancellor such appeal shall be on a special case, and in no other mode whatsoever, except the lord chancellor shall in any case otherwise direct; and such special case shall be approved and certified by the vice-chancellor, and his determination on the settlement of such case shall be final and conclusive: Provided always, that all appeals to the lord chancellor by virtue of this act shall be heard by the lord chancellor only, and not by any other judge of the high court of chancery; and that if no petition of appeal be entered within twenty-one days from the date of the decision or order of the vice-chancellor, and thereafter duly prosecuted, every such decision or order shall be final.

XVII. That all appeals to the vice-chancellor or lord chancellor, and all affidavits and documents to be used on the hearing of any such appeal, shall be entered in the office of the chief registrar; and the vice-chancellor sitting in bankruptcy shall on the hearing of such appeals be attended by some one of the registrars of the court of bankruptcy.

XVIII. That if the lord chancellor shall in any case deem any matter of law or equity brought before him by way of appeal to be of sufficient difficulty or importance to require the decision of the house of lords, or in case both parties in any proceeding before the vice-chancellor shall desire that any such matter may be determined in the first instance by the house of lords, and not by the lord chancellor, then and in such case the whole facts whereupon such question of law or equity shall arise shall be stated in the form of a petition of appeal to the house of lords, and the party appealing may carry an appeal to the house of lords in like manner as other appeals are preferred to that house: Provided always, that the cases to be lodged by the parties in the house of lords shall be confined in matter of fact, in cases of appeal from the lord chancellor, to setting forth the special case brought up to the lord chancellor from the vice-chancellor, and in cases of appeal from the vice-chancellor to setting forth a special case, to be approved and certified by the vice-chancellor, and to such arguments on the point of law as the parties may be advised to state.

XIX. That during the illness or absence, from any reasonable or unavoidable cause, of any commissioner acting in the country, the lord chancellor (as occasion may require, and for such time as he shall think fit to allow), may authorize and direct any of the commissioners acting in London to act in any district in the country for or in aid of any of the commissioners, and so vice versâ, and in the same manner may authorize any of the commissioners appointed to act in any one district in the country to act for or in aid of any of the commissioners authorized to act in any other district in the country; and any commissioners so acting shall have all the power, jurisdiction and authority, and perform all the duties of the commissioner for or in aid of whom such commissioner shall so act.

XX. That any of the commissioners acting in London may during vacation, or during the illness or unavoidable absence of the senior commissioner, exercise and perform the duties imposed upon the senior commissioner by this act.

XXI. That the court in London, and in the several districts in the country, shall be auxiliary to each other for proof of debts and for the examination of persons or witnesses on oath, or for any or either of such purposes: Provided always, that all such examinations shall be taken down in writing, and shall be annexed to and form part of the proceedings in the matter to which the same shall relate, and that no such proof or examination shall be taken without the request in writing of the commissioner before whom the matter is being prosecuted.

Courts to be auxiliary to each other for proof of debts and taking examinations.

[See also act of 1861, sects. 216—220, inclusive. See additional forms, 176.]

XXII. That all power, jurisdiction and authority of the commissioners named in any fiat issued on or prior to the eleventh day of November, one thousand eight hundred and forty-two, shall be deemed to have ceased and determined on that day; and every such fiat not already transferred or removed into the court of bankruptcy shall be transferred and removed into the court in such manner as may by any general rule or order to be made in pursuance of this act be directed.

Power of commissioners named in fiats issued on or prior to 11th Nov. 1842, to cease, and fiats to be removed into court.

XXIII. That all proceedings before the court in any district in the country, or any part of such proceedings or copies or minutes thereof, shall be transmitted to the chief registrar at such time and in such manner as may by any general rule or order to be made in pursuance of this act be directed, and be by him kept among the records of the court.

Proceedings, &c. in the country to be transmitted to chief registrar.

[G. O., 19th Oct. 1852, rr. 40, 45. See also sect. 95, post.]

XXIV. That every warrant issued by the court shall be under the seal of the court and the hand of one of the commissioners; and every summons shall be in writing under the hand of one of such commissioners, or in his absence under the hand of one of the registrars, and under the seal of the court.

Sealing and signature of warrants, &c.

[Altered slightly, act of 1861, sect. 63.]

XXV. That the court shall cause to be sealed with the seal of the court all records, proceedings, documents and copies of the same as are by this act expressly required to be so sealed, and such other records, proceedings, documents and copies of the same as the court shall at any time direct.

Records, proceedings, &c. to be sealed.

[Repealed and re-enacted, act of 1861, sect. 64.]

And with respect to the registrars, be it enacted,

XXVI. That upon the next two occasions of a vacancy in the office of any registrar of the court acting in London (other than the chief registrar) the vacancies shall not be filled up, and the number of registrars acting in London (other than the chief registrar) shall in such manner be reduced to four.

4.
Of the Registrars.

XXVII. That any registrar of the court may, during vacation, or during the illness or absence from any other reasonable cause of any commissioner thereof, act for and as the deputy of such commissioner; and any such registrar so acting shall have and exercise all power vested in the court, except the power of commitment, the hearing of any disputed adjudication, or the hearing or determining of any question of the allowance or suspension of any bankrupt's certificate.

Number of registrars acting in London to be reduced to four.

[Repealed.]

XXVIII. That whenever it shall seem expedient to any court to direct a registrar to act in the prosecution of any bankruptcy for proof of debts, or for the examination of persons or witnesses on oath, or for either of such purposes, it shall be lawful for such court so to direct, and the travelling expenses of such registrar and of any clerk or other officer attending him, incurred in so acting, shall be settled by such court, and paid out of the estate of the bankrupt; and such registrar so acting shall have and exercise all power vested in such court for proof of debts and examination of persons or witnesses, except the power of commitment: Provided always, that all depositions and examinations of persons and witnesses taken before such registrar, and all acts done by him, shall be reduced to writing, and shall be annexed to and form part of the proceedings.

In case of illness, &c. of commissioner, registrar may act for him, &c., except in certain cases.

[G. O., 19th Oct. 1852, r. 44; but see also act of 1861, sect. 52.]

Court may direct registrar to take proof of debts, &c.

[Repealed larger powers involving this given, act of 1861, sects. 52, 58.]

XXIX. That the chief registrar shall provide a seal for himself and each of the other registrars of the court, on which shall be engraven the style of the court, and the name of the district in which such registrar is acting; and every such seal shall be kept by the chief and other registrars respectively for the time being in trust for the purposes of the court; and such seal shall be and shall be deemed and taken to be the seal of the court.

Chief registrar to provide seals.

Registrars may act for each other, &c.

XXX. That any registrar of the court may act for the chief registrar or for any other registrar thereof, and during the illness, or absence from any reasonable or unavoidable cause, of any registrar acting in the country, the lord chancellor (as occasion may require, and for such time as he shall think fit to allow), may authorize and direct any of the registrars acting in London to act in any district

[See as to other substitutionary powers, 17 & 18 Vict. c. 119, ss. 4—8; see also act of 1861, sect. 9, for power to appoint additional registrars.]

in the country for or in aid of any of the registrars, and so vice versâ, and in the same manner may authorize any of the registrars appointed to act in one district in the country to act for or in aid of any of the registrars appointed to act in any other district in the country; and any such registrar so acting shall have all the power, jurisdiction and authority, and perform all the duties of the registrar for or in aid of whom he shall so act.

5.
Of the Accountant.

Accountant to have superintendence, &c. of funds.

Salary of accountant to be in lieu of all fees, &c.

[See act of 1861, sect. 12; see also sects. 181, 183. G. O., 12th Oct. 1861, r. 33.]

Names of accounts to be changed.

Accounts kept at the bank of England, called "the bankruptcy fund account" and "chief registrar's account," to be subject to the orders of the lord chancellor.

Securities may be purchased.

Lord chancellor may order securities purchased to be sold in certain cases.

And with respect to the accountant in bankruptcy, be it enacted,

XXXI. That the accountant in bankruptcy shall superintend and control the care and management of the funds belonging to bankrupts' estates, and of all funds which may come into the court under any matter to be prosecuted therein under and by virtue of this act, and shall conduct the business of it in such manner as may by the lord chancellor, or by any general rule or order to be made in pursuance of this act, be directed; and the salary of the accountant shall be in lieu of all fees and emoluments whatsoever, and he shall not, directly or indirectly, receive any further sum, either for commission, brokerage, or otherwise; and the brokerage business of the accountant's office shall be transacted upon such terms as any two of the commissioners of the court acting in London shall determine, and the sum paid to the broker shall be charged by the accountant to the estate for which the investment or sale shall be made, and when such sum shall be determined the commissioners aforesaid may direct the payment of it in such manner as to them may seem just.

XXXII. That all monies and securities which at the commencement of this act may be standing in the books of the bank of England in the name of the accountant in bankruptcy to the credit of the accounts intituled respectively "the secretary of bankrupts' account," "the secretary of bankrupts' compensation account," and "the interest arising from bankruptcy fund account," and all monies and securities which shall be standing to the credit of the account intituled "fund arising from fees in bankruptcy," or which shall be so standing in the name of the "registrar of meetings," shall be transferred and carried to an account to be opened therein, and intituled "the chief registrar's account;" and all monies and securities which shall thereafter stand to the credit of the account to be so opened and intituled shall be subject to all the orders theretofore made in regard to monies paid or directed to be paid in to those accounts.

XXXIII. That the account kept at the bank of England in the name of the accountant, and called "the bankruptcy fund account," and the account to be opened as mentioned in the preceding article, and intituled "the chief registrar's account," and each such account, shall be subject to such general orders touching the payment in, investment, accounting for, and payment out of the same for the purposes mentioned in this act, as the lord chancellor shall from time to time think fit to prescribe.

XXXIV. That out of the cash now lying or which shall hereafter lie dead and uninvested in the bank of England in the name of the accountant to the credit of any account kept by him as such accountant, any sum or sums of money shall and may, by virtue of any order or orders of the lord chancellor to be made for that purpose, from time to time be placed out and invested, in one entire sum or in parcels, in the name of the accountant, on such government or parliamentary securities as in and by such order or orders shall be directed, and such securities shall be carried to the accounts respectively on account of which they were so purchased; and the interest and dividends of all securities so purchased shall from time to time be received by the governor and company of the bank of England, and be carried to the account intituled "the chief registrar's account."

XXXV. That if at any time hereafter the whole or any part of the money placed out on securities shall be wanted to answer any demands due in respect of any bankrupt's estate, or if it shall at any time appear that the balance of cash remaining to the credit of the accountant is not so large as it ought to be, having regard as well to the convenience of the suitors as to the necessity of affording a fair remuneration to the bank of England for keeping the accounts, the lord chancellor may direct the whole or any part of such securities to be sold and disposed of, and the money arising from such sale to be paid into the bank of England to the credit of the accounts to which they respectively belong.

XXXVI. That on or before the first day of March in every year, if parliament be then sitting, or if not, within fourteen days from the commencement of the then next session of parliament, there shall be laid before parliament, by the accountant, a return showing the total amount of monies paid into the bank of England to the credit of the accountant during the year preceding and up to the thirty-first day of December in that year, and distinguishing therein the amount paid over by her majesty's commissioners of inland revenue under the provisions hereinafter contained; the total amount of monies paid out during the same period by orders of the lord chancellor, the vice-chancellor, or the court of bankruptcy or any commissioner thereof; the balances on the said thirty-first day of December in the bank of England standing to the credit of the accountant; and showing also the net amounts standing at the bank of England to the credit of the accountant on the first day of January on each of the following distinct accounts; viz., first, the bankruptcy fund account; second, the unclaimed dividend account; and third, the chief registrar's account; and the return in respect of the last-mentioned account shall have an appendix attached thereto, detailing all payments made from such account, and to whom made, and whether as salaries, compensations, annuities, services, or travelling or other expenses or allowances; and the said return shall specify the amount transferred and paid out as dividends out of the dividend account, and shall also show the balance then existing on such account.

Returns to parliament to be made by accountant.

[Repealed, but substantially re-enacted, act of 1861, sect. 67.]

XXXVII. And with respect to the master, be it enacted, that the duties of the master shall be the taxation of all such bills of fees, costs, charges and disbursements as may by any general rule or order to be made in pursuance of this act be directed, subject to review of the court; and the place, time and manner in which his duties shall be conducted shall be such as shall be specified in such general rule or order: and all sums and fees which now or at any time before the commencement of this act are directed to be paid by the master into the bank of England to the account intituled "the secretary of bankrupts' account," and all sums and fees received by the master after the commencement of this act, shall be paid into the bank of England to the account intituled "the chief registrar's account."

6.
Of the Master.

Duties.

[Repealed, but re-enacted, act of 1861, sect. 13.]

[G. O., 19th Oct. 1852, rr. 48—51.]

And with respect to the official assignees, be it enacted,

XXXVIII. That the official assignees of the court of bankruptcy shall give such security, and be subject to such rules, and act in such manner, as may by the lord chancellor, or by any general rule or order to be made in pursuance of of this act, be from time to time directed.

7.
Of the Official Assignees.

Official assignees to give security, &c.

[G. O., 19th Oct. 1852, rr. 123—126; see also as to registrars of county courts, who are official assignees, act of 1861, sect. 10.]

Their duty.

[Repealed. See, however, G. O., 19th Oct. 1852, still in force, rr. 119—161.]

XXXIX. That one of such official assignees shall in all cases be appointed by the court an assignee of each bankrupt's estate and effects to act with the assignee or assignees to be chosen by the creditors; and all the personal estate and effects, and the rents and profits of the real estate, and the proceeds of sale of all the estate and effects, real and personal, of the bankrupt, shall in every case be possessed and received by such official assignee alone, save where it shall be otherwise directed by the court; and all stock in the public funds or of any public company, and all monies, exchequer bills, India bonds, or other public securities, and all bills, notes and other negotiable instruments, shall be forthwith transferred, delivered and paid by such official assignee into the bank of England, to the credit of the accountant in bankruptcy, to be subject to such order and regulation for the keeping of the account of the said monies and other effects, and for the payment and delivery in, investment, and payment and delivery out of the same as the lord chancellor or as the vice-chancellor, or any commissioner of the court if authorized so to do by any order of the lord chancellor, shall direct.

To act as sole assignee till creditors' assignees chosen, and may sell or otherwise dispose of property of a perishable nature, &c.

[See act of 1861, sect. 229; also sect. 108; bankruptcy form, 85.]

Not to interfere with creditors'

XL. That until assignees shall be chosen by the creditors of the bankrupt the official assignee shall, to all intents and purposes whatsoever, be deemed to be the sole assignee of the bankrupt's estate and effects, and, if the court shall so order, may, before assignees shall be chosen by the creditors, sell or otherwise dispose of any property of a bankrupt which shall be of a perishable nature, or the holding possession whereof until the choice of assignees would in the judgment of the court be prejudicial to the bankrupt's estate: Provided always, that nothing herein contained shall extend to authorize any official assignee to

assignees in appointment, &c. of solicitor, &c.

Official assignee not personally liable for acts done in execution of his duty.

Court may appoint another official assignee on death, &c.

Power to appoint official assignee to act with the existing assignees under old fiats.

Remuneration to official assignee.

[*Repealed. See act of 1861, sect. 31.*]

Returns by official assignees.

[*Repealed. See act of 1861, sects. 31, 67.*]

8.
Of the Messengers.

Number of messengers acting in London to be reduced to four.

[*Repealed. See act of 1861, sect. 17.*]

interfere with the assignees chosen by the creditors, in the appointment or removal of a solicitor or attorney, or, after such choice, in directing the time and manner of effecting any sale of a bankrupt's estate or effects.

XLI. That no official assignee shall be personally responsible or liable for any act done by him, or by his order or authority, in the execution of his duty as such official assignee, by reason of the petitioning creditor's debt, trading or act of bankruptcy upon which any adjudication of bankruptcy shall have been grounded, or of any or either of such matters, being insufficient to support such adjudication; and no official assignee shall be deemed personally answerable for or by reason of his having received any money, bills, notes or other negotiable instruments under any bankruptcy in his character of official assignee, provided he shall have paid and deposited such money, bills, notes and other negotiable instruments during the prosecution of the bankruptcy to and in the bank of England to the credit of the accountant in bankruptcy for the particular estate for which such money, bills, notes or other negotiable instruments shall have been received, and shall have given notice of such payment or deposit (as the case may be) to any person claiming such money, bills, notes or other negotiable instruments of the official assignee; and provided also, that the official assignee, after such payment or deposit, shall not have dealt with such money, bills, notes or other negotiable instruments otherwise than in the execution of his duty as official assignee, and under the order of the court; and if any action shall be brought against the official assignee, either solely or jointly with the creditors' assignee, in respect of such money, bills, notes or other negotiable instruments, it shall be lawful for a judge of the court in which the same shall be brought, upon application of the official assignee, and upon an affidavit of facts, to set aside the proceedings in such action so far as the official assignee is concerned, with such costs, or without costs, as to the judge shall seem meet.

XLII. That on the death or removal of any official assignee who shall have been appointed to act in any bankruptcy the court shall have power to appoint another official assignee to act in such bankruptcy.

XLIII. That the court may, at discretion, appoint an official assignee to act with the existing assignees, if any, under any fiat which has been or may be removed into court, and may direct the existing assignees to pay and deliver over to such official assignee all monies, books, papers and effects whatsoever in their possession or custody as such assignees; and all the real and personal estate of the bankrupt under such fiat shall immediately on such appointment vest in such official assignee jointly with the existing assignees, if any, in like manner as if the proceedings in the bankruptcy had originally been commenced by virtue of this act, without prejudice to any action or suit commenced or any contract entered into by the existing assignees at the time of the commencement of this act.

XLIV. That the court may order and allow to be paid out of any bankrupt's estate, to the official assignee thereof, as a remuneration for his services, such sum as shall, upon consideration of the amount of the bankrupt's property, and the nature of the duties performed by such official assignee, appear to be just and reasonable.

XLV. That on or before the first day of March in every year, if parliament be then sitting, or if not within fourteen days from the commencement of the then next session of parliament, there shall be laid before parliament by every official assignee a return, in the form contained in schedule B. to this act annexed, showing the particulars in such form mentioned in respect of every estate under his charge, and which shall not have been finally wound up on the thirty-first day of December in the preceding year; and such return shall be certified by the court, and shall be subject to such further regulation, as to the form of the same or otherwise, as the lord chancellor may from time to time think fit to make.

XLVI. And with respect to the messengers, be it enacted, That on the next two occasions of a vacancy in the office of any messenger of the court acting in London the vacancies shall not be filled up; and in such manner the number of messengers acting in London shall be reduced to four.

XLVII. And with respect to the exemption of officers and servants of the court from serving on juries, inquests and parochial offices, be it enacted, that the chief and every other registrar, the accountant, the master, the official assignees, the messengers and the ushers, shall be exempt and disqualified from serving any parochial office, and from being returned and from serving on any jury or inquest, and shall not be inserted in any list of men qualified or liable to serve as jurors.

9.
Officers, &c. exempt from serving on juries, &c.

And with respect to fees, be it enacted,

10.
Of Fees.

XLVIII. That every document enumerated in the schedule C. to this act annexed shall, from and after the commencement of this act, and in lieu of all fees thereupon, be printed or written upon vellum, parchment or paper bearing the stamp duty set opposite to such documents respectively in such schedule, and having the word "bankruptcy" impressed on every such stamp: Provided always, that where any such document shall consist of more than one sheet, only the first sheet thereof shall be impressed with such stamp.

Certain documents to be written on stamped vellum, &c. in lieu of fees.

[*Repealed. See act of 1861, sect. 41.*]

XLIX. That the commissioners of inland revenue shall give the necessary directions for carrying into effect the provisions of this act with respect to stamp duties in lieu of fees, and shall cause separate and distinct accounts to be kept of all sums of money collected or received by them under the provisions of this act, and of all costs, charges and expenses incurred by them or by their order in carrying the same into effect; and it shall be lawful for the said commissioners to pay, and to deduct and retain out of such monies, all such costs, charges and expenses, and after such deduction they shall from time to time, and in such manner as may by any general rule or order to be made in pursuance of this act be directed, pay over the monies so to be collected and received into the bank of England, to the credit of the accountant in bankruptcy, to the account intituled "the chief registrar's account."

Commissioners of inland revenue to give the necessary directions, to keep separate accounts, &c., and to pay over monies received to bank of England.

L. That it shall be lawful for the commissioners of inland revenue to appoint such persons as they may think fit for the sale and distribution of stamps under this act, and to allow to them such discount or poundage upon such sale or distribution as may by any general rule or order to be made in pursuance of this act be directed or authorized, and it shall be lawful by any such general rule or order to make regulation for the allowance of such stamps issued under the provisions of this act as may have been spoiled or rendered useless, or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage allowed on the sale of stamps of the like kind.

Commissioners of inland revenue may appoint persons for sale and distribution of stamps and make allowance for spoiled stamps.

LI. That the provisions contained in the several acts for the time being in force relating to stamps under the care or management of the commissioners of inland revenue shall (so far as the same are applicable, and consistent with the provisions of this act), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this act, and to the vellum, parchment or paper on which the same shall be impressed, and shall be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting and punishing all frauds, forgeries and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the last-mentioned stamps and sums of money respectively.

Provisions of former acts relating to stamps to be applied to the stamps to be provided under this act.

LII. That no document which by this act is required to have a stamp impressed thereon shall be received or filed or be used in relation to any proceeding in the court, or be of any validity for any purpose whatever, unless or until the same shall have a stamp impressed thereon: Provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon has, through mistake or inadvertence, been received or filed or used without having such stamp, it shall be lawful for the court, if it think fit, to order that such stamp shall be impressed thereon; and thereupon, when a stamp shall have been impressed on such document in compliance with such

Documents not to be received unless a stamp be impressed.

[*Repealed; but see act of 1861, sect. 42.*]

Charges for office copies.

[*G. O.*, 19th Oct. 1852, *rr.* 46, 47; *C. C. O.*, 1st July, 1863, *r.* 7.]

Payment of percentage by official assignees, &c.

[*Repealed, act of 1861, sect. 38.*]

If securities at any time insufficient to answer the demands of any bankrupt, &c., the sum taken for the purposes of this act to be made good by parliament.

11.

Of Salaries, &c.

Salaries of commissioners, officers, &c.

[*See act of 1861, sect. 29. See also 17 & 18 Vict. c. 119, s. 10.*]

Compensations and annuities under former acts continued.

order, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon in the first instance.

LIII. That all office copies of fiats, petitions, affidavits, orders or other proceedings shall be charged for and paid at the rate of three halfpence per folio of ninety words, and shall be made and delivered out in such manner as may be directed by any general rule or order to be made in pursuance of this act.

LIV. That the official assignee of each bankrupt's estate, and every official assignee appointed by the court under any petition for arrangement between a debtor and his creditors, where the estate and effects of such petitioning debtor shall vest in such official assignee, either alone or jointly, in manner hereinafter mentioned, shall pay to the credit of the account intituled "the chief registrar's account," such sum, not less than one-eighth of a pound, and not exceeding five pounds per centum on the gross produce from time to time of any such estate; such sum, within the limit aforesaid, and the time or times for payment thereof, to be fixed by the senior commissioner, with the approval of the lord chancellor; and the senior commissioner, with the like approval, may from time to time lessen or increase such sum, within the limit aforesaid, as may seem just and reasonable, upon consideration of the amount from time to time standing to the said account, and of the claims from time to time chargeable thereupon.

LV. That if at any time it shall appear that the whole of the money laid out on securities, and the stocks, funds and cash standing in the name of the accountant, shall not be sufficient to answer the demands of any bankrupt or his creditors, or other persons interested therein, then and in such case the sum taken for the purposes and by virtue of this act shall be considered a debt due from the public, and to such extent as may be necessary shall be answered and made good by parliament accordingly.

And with respect to the payment of salaries, compensations and retiring annuities, and of travelling and other expenses, be it enacted,

LVI. That the salaries now paid to the commissioners, the lord chancellor's secretary of bankrupts, the chief and every other registrar, the accountant, the master, and the clerks to such secretary, chief registrar, accountant, master and clerk of enrolments respectively, and the ushers of the court, and the registrar of meetings, and the clerk and trainbearer, ushers and assistant usher, of his honour the vice-chancellor sitting in bankruptcy, shall be paid out of the account intituled "the chief registrar's account," and the same shall be paid quarterly, free and clear from all taxes and deductions whatsoever, except the tax on income, on the eleventh day of January, the eleventh day of April, the eleventh day of July and the eleventh day of October in every year, by equal portions, the first payment to be made on the eleventh day of January next; and if any person for the time being holding either of the said offices shall die, resign or be removed from the same, the executor or administrator of the person so dying, or the person so resigning or being removed, shall be entitled to receive such proportionable part of his salary as shall have accrued during the time that such person shall have executed his office since the last payment.

LVII. That all compensations and annuities which shall have been ordered to be paid, and which continue payable under the provisions of former acts relating to bankrupts, and all retiring allowances which shall hereafter become payable under such provisions, shall be charged upon and paid to the persons entitled thereto out of the monies and securities standing to the credit of the account intituled "the chief registrar's account," and shall be paid and payable to such persons during their natural lives, free from all taxes except the tax on income, in such manner and on such days as the lord chancellor may have already ordered or may hereafter order; and in case of the death of any such person, his executor or administrator shall be entitled to receive the proportionate part of such annuity which shall have accrued up to the day of his decease: Provided always, that if any of them shall be appointed to and accept any public office or employment of an annual value less than the amount of any such compensation or annuity, they, during the time they may continue in such office or employment, shall be entitled to receive only so much of their compensation or retiring annuity as shall, together with the salary of such new office

or employment, be equal to such compensation or retiring annuity; and that if any of them shall be appointed to and accept any public office or employment the salary whereof shall equal or exceed in amount their compensation or retiring annuity, then during the time of their continuance in such office or employment such compensation or retiring annuity shall altogether cease.

LVIII. That all monies paid to the account intituled "the chief registrar's account" shall be subject to all orders made before the commencement of this act in regard to monies paid or directed to be paid to the account intituled "the secretary of bankrupts' compensation account," or to the account intituled "the interest arising from the bankruptcy fund account," or to the account intituled "fund arising from fees in bankruptcy," or with regard to the monies and securities standing in the name of the "registrar of meetings," and to such further and other orders as may from time to time be made by the lord chancellor for salaries, compensations, retiring annuities, services, rent and repair of courts in the country, the supply of law books and other books and stationery necessary for the use of the courts, for travelling and other expenses, and generally for all and every such expenses incurred in carrying this act into effect as the lord chancellor shall think fit, and also to such orders as may be made by the commissioners acting as trustees of the piece or parcel of ground hereinafter mentioned, and of the building called "the court of bankruptcy," situate in Basinghall-street, in the city of London.

LIX. That all accounts of the chief registrar, registrars, accountant and master, for stationery and other incidental expenses of their respective offices, shall be audited and allowed by some one of the commissioners of the court before any order for the payment thereof shall be obtained.

And with respect to the buildings in which courts are held, be it enacted,

LX. That the piece or parcel of ground in Basinghall-street, in the city of London, and the building called "the court of bankruptcy" which has been erected thereon, shall from thenceforth be and the same are hereby vested in the commissioners of the court for the time being acting in London, in trust for the purposes of this act.

LXI. That such building shall continue to be called "the court of bankruptcy," and all sittings of the court held in London in any matter under this act, and also all meetings of creditors held in London under any such matter, and so held in pursuance of public advertisement, shall be holden there, unless the court shall in any case otherwise direct.

LXII. That the commissioners acting as trustees of the said piece or parcel of ground and of the building aforesaid, or the major part of them, shall give and enforce such order and direction for the occupation and use of the several offices or rooms in the said building, and for preserving and keeping the said building and the rooms and offices therein or appurtenant thereto in good condition and repair and for insuring and keeping the same insured from loss or damage by fire, as they shall from time to time think proper and advisable.

LXIII. That it shall be lawful for the lord chancellor, on the passing of this act, out of the monies and securities then standing to the credit of the account intituled "the unclaimed dividend account," to order repayment to the treasury of whatever balance may then be remaining due in respect of the several sums advanced for the purchase of the said piece or parcel of ground, and for the erection and fitting-up of the said building; and the trustees of the said ground and building or the major part of them, may thereafter, out of the monies standing to the credit of the account to be opened and intituled "the chief registrar's account," order payment of all expenses incurred for coals and candles for the use of the said building, the expenses of lighting and watching the same, and all taxes, rates and assessments payable in respect thereof, and of keeping the same in proper condition and repair, and of insurance, and all other annual or occasional and necessary expenses attending the establishment, and may also, with the approval of the lord chancellor, order the payment of any charges or expenses that may have been incurred for surveys or plans obtained under the sanction of the lord chancellor, and with a view of affording accommodation to the official assignees.

Monies paid to "the chief registrar's account" to be subject to certain orders heretofore made, and to such orders as may from time to time be made by lord chancellor or by the commissioners trustees of the court in Basinghall-street.

[Repealed; but see act of 1861, sect. 36; G. O., 6th Nov. 1861, r. 5.]

Accounts for stationery, &c. to be audited, &c.

[Repealed, but re-enacted, act of 1861, sect. 36.]

12.

Of the Buildings for holding the Court.

Court of bankruptcy in Basinghall-street to vest in London commissioners.

[Repealed. See act of 1861, sect. 68.]

Building to continue to be called "the court of bankruptcy," &c.

[Repealed. See act of 1861, sect. 68.]

Such building to be under the direction of London commissioners.

[Repealed. See act of 1861, sect. 68.]

Lord chancellor may order repayment of sums advanced by treasury for the purchase of such building; and "the chief registrar's account" to be thereafter subject to orders of trustees for expenses, &c.

[See act of 1861, sect. 36.]

Buildings in which county courts are held to vest in the commissioners of such courts respectively.

13.
Of the Persons liable to become Bankrupt.

Enumeration of the traders liable to become bankrupt.

What persons not to be deemed such traders.

Trader having privilege of parliament.

14.
Acts of Bankruptcy in general.

Departing the realm, absenting, beginning to keep house, yielding to prison, fraudulent outlawry, arrest, attachment, execution, conveyance, surrender, gift, delivery or transfer.

Conveyance of all a trader's property not an act of bankruptcy, unless a petition for adjudication be filed within three months.

LXIV. That the several buildings which have been provided for the court of bankruptcy in the several districts in the country shall be used for the purposes of this act; and such buildings, and such as shall hereafter be provided for such court, in any district in the country, with the appurtenances and effects belonging thereto, shall vest in the respective commissioners acting in such several districts, for the time being, in trust for the purposes of this act.

And with respect to persons liable as traders to become bankrupt, be it enacted,

LXV. That all alum-makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels or coffee houses, limeburners, livery stable keepers, market gardeners, millers, packers, printers, shipowners, shipwrights, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, and all persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt: Provided that no farmer, grazier, common labourer or workman for hire, receiver general of the taxes, or member of or subscriber to any incorporated commercial or trading company established by charter or act of parliament, shall be deemed as such a trader liable to become bankrupt.

LXVI. That if any such trader having privilege of parliament shall commit any act of bankruptcy, he may be dealt with under this act in like manner as any other trader; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases made felonies or misdemeanors by this act.

And with respect to acts of bankruptcy in general, be it enacted,

LXVII. That if any trader liable to become bankrupt shall depart this realm, or being out of this realm shall remain abroad, or shall depart from his dwelling-house or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested or taken in execution for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested or taken in execution, or his goods, money or chattels to be attached, sequestered or taken in execution, or make or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods or chattels, or make or cause to be made any fraudulent surrender of any of his copyhold lands or tenements, or make or cause to be made any fraudulent gift, delivery or transfer of any of his goods or chattels, every such trader doing, suffering, procuring, executing, permitting, making or causing to be made any of the acts, deeds or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy.

LXVIII. That if any such trader shall execute any conveyance or assignment by deed of all his estate and effects to a trustee or trustees for the benefit of all the creditors of such trader the execution of such deed shall not be deemed an act of bankruptcy, unless a petition for adjudication of bankruptcy be filed within three months from the execution thereof, provided such deed shall be executed by every such trustee within fifteen days after the execution thereof by the trader, and the execution by the trader and by every such trustee be attested by an attorney or solicitor, and notice thereof be given within one month after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers, and in case such trader does not reside within forty miles of London, then in the London Gazette and in one London daily newspaper and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee and attorney or solicitor.

LXIX. That if any such trader, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall thereby be deemed to have committed an act of bankruptcy; or if any such trader, having been arrested, committed or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment or detention.

Lying in prison, and escaping out of prison.

[*Repealed; but see act of 1861, sect. 71.*]

LXX. That if any such trader shall file in the office of the lord chancellor's secretary of bankrupts a declaration in writing in the form contained in schedule D. to this act annexed, signed by such trader, and attested by an attorney or solicitor, that he is unable to meet his engagements, every such trader shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a petition for adjudication of bankruptcy shall be filed by or against such trader within two months from the filing of such declaration.

Filing a declaration of insolvency in the office of the secretary of bankrupts.

[*Repealed; but see act of 1861, sect. 72: see 17 & 18 Vict. c. 119, ss. 16, 17, 18; see also act of 1861, sect. 86.*]

LXXI. That if any such trader, after the issuing of any fiat or filing of any petition for adjudication of bankruptcy against him, shall pay money to the petitioning creditor, or give or deliver to such petitioning creditor any satisfaction or security for his debt or for any part thereof, whereby such petitioning creditor may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction or security shall be an act of bankruptcy; and if adjudication of bankruptcy shall have been made under such fiat or petition, the court may either declare such adjudication to be valid, and direct the same to be proceeded in, or may order it to be annulled, and a petition or new petition for adjudication may be filed, and such petition or new petition may be supported either by proof of such last-mentioned or any other act of bankruptcy.

Compounding with petitioning creditor.

Adjudication may either be annulled or declared valid.

LXXII. That if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand, in any of her majesty's courts of record, against any such trader, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off against such judgment, and such trader shall not, within seven days after notice in writing personally served upon such trader, requiring immediate payment of such judgment debt, pay, secure or compound for the same to the satisfaction of such plaintiff, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such notice: Provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order or proceeding of any court of justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner aforesaid.

Trader not paying, securing or compounding for a judgment debt, upon which the plaintiff might sue out execution, within seven days after notice requiring payment.

[*Repealed. See act of 1861, sect. 76 et seq. to 85.*]

LXXIII. That if any decree or order shall be pronounced in any cause depending in any court of equity, or any order shall be made in any matter of bankruptcy or lunacy, against any such trader, ordering such trader to pay any sum of money, and such trader shall disobey such decree or order, the same having been duly served upon him, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order seven days before the day therein appointed for payment of such money shall neglect to pay the same, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the service of such order.

Trader disobeying order of a court of equity, &c. for payment of money, after service of peremptory order for payment on a certain day.

[*See margin, ante, sect. 72.*]

LXXIV. That the filing of a petition in the court for the relief of insolvent

Filing petition in

insolvent debtors
court in England.

debtors in England by any such trader who shall be in actual custody for his discharge from custody, and who shall apply by petition to such court for his discharge from custody, according to the laws for the relief of insolvent debtors in England, shall be deemed to be an act of bankruptcy from the time of filing such petition; and any petition for adjudication of bankruptcy filed against such trader, and under which he shall be adjudged bankrupt, before the time appointed by the said court for the relief of insolvent debtors, and advertised in the London Gazette, for such prisoner to be brought up to be dealt with according to the laws for relief of insolvent debtors in England, or at any time within two months from the time of making any order vesting the estate and effects of any such prisoner in the provisional assignee of such court, whether upon the petition of such prisoner or the petition of a creditor, shall have the effect of divesting the real and personal estate and effects of such person out of the provisional assignee: Provided always, that the filing of such petition shall not be deemed an act of bankruptcy, unless such trader be adjudged bankrupt before the time so advertised as aforesaid, or within such two months as aforesaid.

Filing petition in
insolvent debtors
court in India.

11 & 12 Vict. c. 21.

[*Repealed; but see
act of 1861, sect.
75.*]

LXXV. That the filing of a petition under an act passed in the eleventh year of the reign of her present majesty, intituled "An Act to consolidate and amend the Laws relating to Insolvent Debtors in India," by any trader liable to become bankrupt under this act, and the adjudication of an act of insolvency under that act, shall, for the purposes of this act, be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such trader at the time of filing such petition, or of filing the petition on which the adjudication of an act of insolvency shall be made; and any creditor or creditors of such trader whose debt or debts shall be of sufficient amount to enable him or them to petition for adjudication of bankruptcy under this act may, at any time within two months after notice of the insolvency shall have been given in the London Gazette as directed by the said act for amending the laws relating to insolvent debtors in India, petition for adjudication of bankruptcy under this act against such trader, under which petition all such proceedings may be had and taken as are authorized and directed by this act, subject to such exceptions and provisions as are contained in the last-mentioned act in this behalf.

Filing petition for
arrangement be-
tween a trader
debtor and his
creditors.

[*There is now no
such petition.*]

LXXVI. That the filing of a petition by any such trader for an arrangement between such trader and his creditors, under the provisions of this act with respect to arrangements between debtor and creditor under the superintendence and control of the court, shall be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such trader at the time of filing such petition, provided a petition for adjudication of bankruptcy shall be filed against him within two months after such petition for arrangement shall have been dismissed: Provided also, that no adjudication shall be made on any such act of bankruptcy unless and until after such petition for arrangement shall have been dismissed.

Trader having
privilege of par-
liament not pay-
ing or compound-
ing to the satis-
faction of the cre-
ditor, and enter-
ing appearance to
action within one
month.

[*See also addi-
tional forms, 184.*]

LXXVII. That if any creditor or creditors of any such trader having privilege of parliament to an amount hereinafter declared to be requisite to support a petition for adjudication of bankruptcy, shall file an affidavit in any court of record at Westminster, that such debt is justly due to him, and that such debtor, as he verily believes, is such trader, and shall sue out of the same court a writ of summons, in the form contained in schedule E. to this act annexed, against such trader, and serve him with a copy of such summons, if such trader shall not, within one month after personal service of such summons, pay, secure or compound for such debt to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action, together with such costs as shall be given in the same, and within one month next after personal service of such summons cause an appearance to be entered to such action in the proper court in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons.

And with respect to acts of bankruptcy by reason of nonpayment after summons of the court, and the proceedings thereupon, be it enacted,

LXXVIII. That if any creditor of any such trader shall file an affidavit in the court in the district in which such trader shall reside in the form specified in schedule F. hereunto annexed, of the truth of his debt, and of the debtor, as he verily believes, being such trader, and of the delivery to such trader personally, or to some adult inmate at his usual or last known place of abode or business, of an account in writing of the particulars of his demand, with a notice thereunder requiring immediate payment thereof, in the form specified in schedule G. annexed to this act, it shall be lawful for the court in which such affidavit shall be filed to issue a summons in writing, in the form contained in schedule H. annexed to this act, calling upon such trader to appear before such court, and stating in such summons the purpose for which such trader is called upon to appear as hereinafter provided: Provided always, that if the demand of a creditor appear by such affidavit to be due from two or more persons carrying on trade in partnership, the delivery of such account and notice to any one of the partners personally, or to some adult inmate at his usual or last known place of abode or business, and also at the place of business of the firm, as aforesaid, shall be sufficient to authorize the court to issue such summons against any other of such partners, as well as against the partner served personally with such account and notice.

LXXIX. That upon the appearance of any such trader so summoned as aforesaid it shall be lawful for the court to require him to state whether or not he admits the demand of the creditor, or any and what part thereof, and if such trader shall admit such demand, or any part thereof, to reduce such admission into writing in the form contained in schedule I. annexed to this act; and such admission so reduced into writing such trader is hereby required to sign, and, being so signed, the same shall thereupon be filed in such court; and it shall also be lawful for the court to allow such trader upon his said appearance to make a deposition upon oath, in writing under his hand, to be filed in such court, in the form contained in schedule J. annexed to this act, that he verily believes he has a good defence upon the merits to such demand, or to some and what part thereof; and in such case it shall be lawful for the court at the same time to require such trader to enter into a bond, according to the form contained in the schedule K. to this act annexed, in such sum and with such two sufficient sureties as the court shall approve of, to pay such sum or sums as shall be recovered, together with such costs as shall be given in any action which shall have been or shall be brought for the recovery of such demand, or of any part thereof in respect of which such deposition shall be made.

LXXX. That if any such trader so summoned as aforesaid shall not come before the court at the time appointed (having no lawful impediment made known to and proved to the satisfaction of the court, and allowed), or if any such trader, upon his appearance to such summons, or at any enlargement or adjournment thereof, shall refuse to admit such demand, and shall not make a deposition, in the form aforesaid, that he believes he has a good defence upon the merits to such demand, or some part thereof, and (if required by the court so to do) enter into such bond as last aforesaid, then and in either of the said cases, if such trader shall not, within seven days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure or compound for such demand to the satisfaction of such creditor, or enter into a bond, in such sum and with two sufficient sureties as such court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in such action, as the case may be, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such summons, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit.

LXXXI. That if any such trader so summoned as aforesaid shall upon his appearance sign and file an admission of such demand in form aforesaid, and shall not within seven days next after the filing of such admission pay or tender

15.

*Acts of Bankruptcy
by Nonpayment
after Summons.*

Creditor making affidavit of his debt and of his having given notice requiring immediate payment, &c., court may summon the trader.

[G. O., 19th Oct. 1852, rr. 68—81.]

Delivery, notice, &c. in cases of partnership.

Manner of proceeding upon the appearance of the trader.

[G. O., 19th Oct. 1852, rr. 78, 79.]

[G. O., 19th Oct. 1852, rr. 82—88.]

Trader not attending summons or refusing to admit the demand, &c., and not paying or compounding within a certain time, or giving bond for payment of the same if recovered in an action, &c., with costs, to be an act of bankruptcy.

[See additional forms, 21.]

Trader signing admission, and not paying, securing or com-

pounding within a certain time, an act of bankruptcy. [See additional forms, 21.]

Trader admitting part only of a demand, &c., and the trader not paying, &c. the sum admitted, and as to residue not paying the same, &c., or giving bond to pay the same if recovered in an action, with costs, an act of bankruptcy.

What shall be deemed a refusal to admit of debt.

Court may enlarge the time for admission or entering into bond, &c.

Admission of debt signed elsewhere than in court, if attested by trader's attorney, to have the same force as an admission signed in court.

Court may award costs to the creditor or the trader summoned.

If creditor bring an action, and do not recover the amount sworn to in his affidavit of debt, and if the affidavit be made for such amount

and offer to pay to such creditor the amount of such demand, or secure or compound for the same to the satisfaction of the creditor, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the filing of such admission, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit.

LXXXII. That if any such trader so summoned as aforesaid shall upon his appearance sign an admission for part only of such demand in the form aforesaid, and shall not make a deposition in the form aforesaid that he believes he has a good defence upon the merits to the residue of such demand, and (if required by the court so to do) enter into such bond as aforesaid to pay such sum or sums as shall be recovered, together with such costs as shall be given in any such action as aforesaid for the recovery of such residue, then and in such case, if such trader, as to the sum so admitted, shall not, within seven days next after the filing of such admission, pay or tender and offer to pay to such creditor the sum so admitted, or secure or compound for the same to the satisfaction of the creditor, and as to the residue of such demand shall not within seven days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure or compound for the same to the satisfaction of such creditor, or enter into a bond, in such sum and with two sufficient sureties as the court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such summons, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit.

LXXXIII. That if any such trader so summoned as aforesaid shall upon his appearance refuse to sign the admission in that behalf required, whatever may be the nature of his statement, or whether he makes any statement or not, it shall be deemed, for the purposes of this act, that every such trader thereby refuses to admit such demand: Provided always, that it shall be lawful for the court, upon reasonable cause shown, to enlarge the time for calling upon such trader to state whether or not he admits such demand or any part thereof, and for entering into such bond, or for any or either of such matters, for such time as the court shall think fit.

LXXXIV. That any admission of any debt made after such summons and signed by any such trader elsewhere than before the court, may be filed in court, and shall be of the same force and effect to all intents and purposes as an admission signed by such trader on his appearance in court, provided such admission be made in the form contained in schedule L. to this act annexed, and there be present some attorney of one of her majesty's superior courts of law on behalf of such trader, expressly named by him and attending at his request, to inform him of the effect of such admission before the same is signed by such trader, and provided also, that such attorney do subscribe his name thereto as a witness to the due execution thereof, and in such attestation declare himself to be attorney for the said trader, and state therein that he subscribes as such attorney.

LXXXV. That where any such trader against whom an affidavit of debt is filed by any creditor as aforesaid shall be summoned to appear before the court in which such affidavit shall be filed, every such creditor or trader shall have such costs as the court in its discretion shall think fit, or the court may direct the costs of either party of, incident to, or attendant upon such affidavit and summons to abide the event of any action which shall have been brought or shall thereafter be brought for the recovery of such demand or any part thereof, and in such case such costs shall be costs in the cause, and recovered under the judgment and execution in such action.

LXXXVI. That in every action brought after the commencement of this act, wherein any such creditor is plaintiff and any such trader is defendant, and wherein the plaintiff shall not recover the full amount of the sum for which he shall have filed an affidavit of debt as aforesaid, such defendant shall be entitled to costs of suit, to be taxed according to the custom of the court in which such action shall have been brought, provided that it shall be made appear to the

satisfaction of the court in which such action is brought, upon motion to be made in court for that purpose, and upon hearing the parties by affidavit, that the plaintiff in such action had not any reasonable or probable cause for making such affidavit of debt in such amount as aforesaid, and provided such court shall thereupon, by rule or order, direct that such costs shall be allowed to the defendant; and the plaintiff shall, upon such rule or order being made, be disabled from taking out any execution for the sum recovered in any such action, unless the same shall exceed (and then in such sum only as the same shall exceed) the amount of the taxed costs of the defendant in such action; and in case the sum recovered in any such action shall be less than the amount of the costs to be taxed as aforesaid of the defendant, then the defendant shall be entitled, after deducting the sum of money recovered by the plaintiff in such action from the amount of his costs so to be taxed, to take out execution for such costs in like manner as a defendant may now by law have execution for costs in other cases.

LXXXVII. And be it enacted, That if any accredited agent of any body corporate or public company shall have had notice of any act of bankruptcy, such body corporate or company shall be deemed to have had such notice.

LXXXVIII. And be it enacted, That no person shall be liable to become bankrupt by reason of any act of bankruptcy committed more than twelve months prior to the issuing of any fiat in bankruptcy or the filing of any petition for adjudication of bankruptcy against him, and that no adjudication of bankruptcy shall be deemed invalid by reason of any act of bankruptcy prior to the debt of the petitioning creditor, provided there be a sufficient act of bankruptcy subsequent to such debt.

And with respect to the proceedings before adjudication of bankruptcy, be it enacted,

LXXXIX. That proceedings to obtain adjudication of bankruptcy shall be by petition (such petition, if presented by a creditor, being in the form specified in the schedule M. to this act annexed, and the truth thereof verified by the affidavit of the petitioner in the form specified in the schedule N. to this act annexed, and if presented by a trader, being in the form specified in the schedule O. to this act annexed, and the truth thereof verified by the affidavit of such trader in the form specified in the schedule N. to this act annexed); and every such petition shall be filed of record and prosecuted as directed by this act; and from and after the filing of such petition the court shall by virtue of this act, and without any commission, fiat or special authority whatsoever, have full power and authority to take such order and direction with the body of the bankrupt as mentioned in this act, as also with all his lands, tenements and hereditaments, both within this realm and abroad, as well copy or customary hold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements and hereditaments as such bankrupt may lawfully depart withal, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandise and debts, wheresoever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and payment of the creditors of the bankrupt.

XC. That every petition for adjudication of bankruptcy against or by any trader liable to become bankrupt shall be filed and prosecuted in the court within the district of which such trader shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this act specially provided: Provided always, that the senior commissioner shall have power, whenever he may deem it expedient, to order any petition against or by any trader to be prosecuted in any district with or without reference to the district in which the trader shall have resided or carried on business, or to consolidate the proceedings or any part thereof under two or more petitions for adjudication of bankruptcy, or to impound any petition for adjudication of bankruptcy, and the proceedings thereunder, or any part thereof, upon such terms as the senior commissioner shall think fit, or to transfer any petition for adjudication of bankruptcy, and the proceedings thereunder, and the prosecution or the further prosecution thereof, from the court in any one

without probable cause, the defendant in the action shall be entitled to costs.

16.
General Provisions with respect to Acts of Bankruptcy.

Notice of acts of bankruptcy to agents of corporate bodies, &c.

No person liable upon an act of bankruptcy committed more than twelve months before fiat, &c.

17.
Of Procedure to obtain Adjudication.

Proceedings in bankruptcy to originate by petition to the court of bankruptcy without fiat, &c.

[See act of 1861, sect. 87.]

[G. O., 19th Oct. 1852, r. 2; G. O., 12th Oct. 1861, r. 11.]

[C. C. forms, 2, 4.]

Petition to be filed and prosecuted in the court for the district in which the trader shall have resided or carried on business for six months next before petition, except upon special order.

[Repealed; but see act of 1861, sect. 88.]

Amount of petitioning creditor's debt.

Such debt may be payable at a future time, although security given.

[Repealed, but re-enacted. See act of 1861, sect. 89.]

Petition for adjudication may be made by the public officer of certain co-partnerships.

[Repealed, but substantially re-enacted, act of 1861, sect. 92.]

Trader may petition for adjudication of bankruptcy against himself.

[Repealed. See act of 1861, sect. 86; see also 17 & 18 Vict. c. 119, s. 20, also repealed.]

Where petitions for adjudication are to be filed.

Docket book.

Allotment of petitions.

[Repealed. See act of 1861, sect. 88; G. O., 12th Oct. 1861, rr. 1, 31.]

Registrars to transmit copies of entries, adjudications, &c. to chief registrar.

[G. O., 19th Oct. 1852, r. 40.]

If adjudication be not obtained within three days after petition, any other creditor

district to the court in any other district, and the court to which any such transfer shall be made may remove the official assignee, and appoint a new official assignee to any such bankruptcy; and any such order by the senior commissioner may be in such of the forms contained in the schedules P., Q. or R. to this act annexed as may be adapted to the case, or to the like effect.

XCI. That the amount of the debt of any creditor petitioning for adjudication of bankruptcy shall be as follows; that is to say, the single debt of such creditor, or of two or more persons being partners, so petitioning, shall amount to fifty pounds or upwards, and the debt of two creditors so petitioning shall amount to seventy pounds or upwards, and the debt of three or more creditors so petitioning shall amount to one hundred pounds or upwards; and every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning, whether he shall have had any security in writing for such sum or not.

XCII. That a petition for adjudication of bankruptcy against any trader indebted in the amount aforesaid to any copartnership, duly authorized to sue and be sued in the name of a public officer of such copartnership may be filed by such public officer as the nominal petitioner for and on behalf of such copartnership.

XCIII. That any trader liable to become bankrupt may petition for adjudication of bankruptcy against himself: Provided always, that unless such trader shall forthwith after the filing of his petition and before adjudication of bankruptcy thereunder, make it appear to the satisfaction of the court that his available estate is sufficient to pay his creditors at least five shillings in the pound, clear of all charges (to be estimated by the court) of prosecuting the bankruptcy, such petition shall be dismissed, and no further petition shall be filed by such trader in the same district without the leave of the court first obtained for that purpose, and the adjudication on any further petition shall be subject to the like condition as aforesaid as to the available estate of the trader.

XCIV. That every petition for adjudication of bankruptcy presented to the court in London shall be filed in the office of the chief registrar, and such chief registrar shall immediately cause the same to be entered in a book to be kept by him for that purpose, to be called the general docket book (which book shall be in the form contained in schedule S.); and every such petition shall be allotted, in such manner as may by any general rule or order made in pursuance of this act be directed, to one of the commissioners of the court, and it shall be transmitted forthwith to the registrar attending such commissioner, who, when adjudication shall have been made shall deliver to the chief registrar a duplicate of such adjudication, in order that the same may be minuted in the general docket book; and all petitions presented to the court in the country districts shall be filed with the respective registrars thereof, who shall in like manner enter the same in similar docket books (one of which shall be kept in each court), and in districts where there is more than one commissioner one of such commissioners or one of the registrars shall allot the petitions by ballot, or in such manner as the commissioners of such district court may from time to time direct.

XCV. That the registrars acting in the country shall transmit daily by post to the chief registrar copies of all entries made by them in their docket books, and of all adjudications made in the respective district courts, and the chief registrar shall immediately on the receipt thereof cause the same to be entered in the general docket book; and when any fiat or petition in prosecution in any of the courts, or any adjudication of bankruptcy made therein, shall have been superseded, dismissed or annulled, or when the time allowed to any petitioning creditor for proceeding shall have been extended, the registrar in attendance on the commissioner making such order shall forthwith transmit a certified copy thereof to the chief registrar, who shall cause the same to be minuted in the general docket book.

XCVI. That if the petitioning creditor in any petition for adjudication of bankruptcy shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the court, the court may at any time within fourteen days then next

following, upon the application of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such creditor, and of the other requisites to support such petition (except the debt of the petitioning creditor); but if neither the petitioner nor any other creditor shall within such fourteen days, or within such extended time as may be granted by the court for that purpose, apply to the court to adjudicate upon such petition, no further proceeding shall be taken thereon.

XCVII. That any creditor whose debt is sufficient to entitle him to petition for adjudication of bankruptcy against all the partners of any firm may petition for such adjudication against one or more partners of such firm, and every such petition shall be valid, although it does not include all the partners of the firm; and in every petition for adjudication against two or more persons the court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person as to whom such petition is not ordered to be dismissed, nor shall any such person's certificate be thereby affected.

XCVIII. That after a fiat issued, or a petition for adjudication of bankruptcy filed, against or by one or more member or members of a firm, any petition or petitions for adjudication of bankruptcy against or by any other member or members of such firm shall be filed and prosecuted in the court in which the first fiat or petition was prosecuted; and immediately after the adjudication under such other petition or petitions all the estate real and personal of such bankrupt or bankrupts shall vest in the official assignee and the creditor's assignee (if any) under the first fiat or petition; and thereafter all separate proceedings under such petition or petitions shall be stayed; and such petition or petitions shall, without affecting the validity of the first fiat or petition, be annexed to and form part of the same; provided that the senior commissioner may direct that such other petition or petitions shall be filed and prosecuted in any other court, or be proceeded in either separately or in conjunction with the first fiat or petition; and such direction shall be made by a memorandum to that effect indorsed on such petition or petitions and under the hand of the senior commissioner.

XCIX. That whenever any petition for adjudication of bankruptcy shall have been filed against any person, and it shall be proved to the satisfaction of the court that there is probable cause for believing that such person is about to quit England, or to remove or conceal any of his goods or chattels, with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for the court to issue a warrant, directed to a messenger of the court and his assistants, or to such person or persons as the court shall think fit, whereby such messenger and his assistants, or other person or persons, shall have authority to arrest the person against whom such petition shall have been filed, and also to seize his books, papers, monies, securities for monies, goods and chattels, wheresoever he or they may be found, and him and them safely keep until the expiration of the time allowed for adjudication on such petition, or until such person shall be adjudged bankrupt under such petition, and be thereon dealt with according to this act: Provided always, that any person arrested upon any such warrant, or any person whose books, papers, monies, securities for monies, goods or chattels, have been seized under any such warrant, may apply, at any time after such arrest or seizure, to the court, for an order or rule on the petitioning creditor to show cause why the person arrested should not be discharged out of custody, or why his books, papers, monies, securities for monies, goods and chattels should not be delivered up to him; and it shall be lawful for such court to make absolute or discharge such order or rule.

C. That the court, before adjudication, may summon before it any person whom such court shall believe capable of giving any information concerning the trading of or any act of bankruptcy committed by the person against whom any petition for adjudication of bankruptcy has been filed, and may require any person so summoned to produce any books, papers, deeds and writings, and other documents, in his custody, possession or power, which may appear to the court to be necessary to establish such trading or act of bankruptcy; and it

may proceed on it.

[*Repealed. See act of 1861, sect. 96.*]

Petitions may be presented against one or more partners in a firm; and petitions against two or more persons may be dismissed as to one or more without affecting the rest.

In cases of a second or other petition against one or more members of a firm, the same shall be prosecuted in the court in which the first was prosecuted, &c.

In case trader against whom a petition has been filed be about to quit England, or to remove or conceal his goods, with intent to defraud creditors, he may be arrested, and his goods seized.

[*See additional forms, 44.*]

Trader so arrested may apply to the court for his discharge forthwith.

Court may before adjudication summon witnesses to prove trading and act of bankruptcy.

[*See additional forms, 40.*]

shall be lawful for the court to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning such trading and act of bankruptcy.

18.
*Of Adjudication,
and Proceedings
thereunder.*

Court to make
adjudication, &c.
upon certain
proofs, &c.

[See G. O., 12th
Oct. 1861, sched. 1;
also additional
forms, 16—22.]

Appointment of
official assignee.

In case petition-
ing creditor's debt
be insufficient,
court may pro-
ceed upon the
application of any
other creditor
whose debt is
sufficient.

Bankrupt to have
notice thereof
before advertise-
ment of adjudica-
tion, and to be
allowed seven
days, or such ex-
tended time, not
exceeding four-
teen days, as the
court shall think
fit, to show cause
against adjudica-
tion.

[G. O., 19th Oct.
1852, rr. 14—16.
See additional
forms, 24.]

[See additional
forms, 25.]

Adjudication
may, with bank-
rupt's consent, be
advertised before
the expiration of
the time allowed
for showing
cause.

[See additional
forms, 26. See
also G. O., 12th

And with respect to the adjudication of bankruptcy, and the proceedings for securing the property and surrender of the bankrupt, be it enacted,

CI. That the court, under a petition filed by a creditor, shall, upon proof of the petitioning creditor's debt, and of the trading and act of bankruptcy of the person against whom such petition is filed, adjudge such person bankrupt; or if in case of the failure of the petitioning creditor to proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as may be allowed by the court, another creditor shall apply for adjudication upon such petition, then upon such application, and proof of such creditor's debt, and of the trading and act of bankruptcy of the person against whom such petition is filed, the court shall adjudge such trader bankrupt; and, under a petition filed by a trader, the court, upon the application of such trader, and upon proof of the trading and of the filing a declaration of insolvency, and of the sufficiency of his available estate to the extent required by this act, shall adjudge such trader bankrupt.

CII. That forthwith after adjudication the court shall appoint an official assignee to act as hereinbefore provided in this behalf.

CIII. That if after adjudication of bankruptcy the debt of the petitioning creditor be found by the court to be insufficient to support such adjudication, it shall be lawful for the court, upon the application of any other creditor having proved any debt sufficient to support an adjudication, to order the petition for adjudication of bankruptcy to be proceeded in, and it shall by such order be deemed valid, which order may be in the form contained in the schedule T. to this act annexed, or to the like effect.

CIV. That before notice of any adjudication of bankruptcy shall be given in the London Gazette, and at or before the time of putting in execution any warrant of seizure which shall have been granted upon such adjudication, a duplicate of such adjudication shall be served on the person adjudged bankrupt, personally or by leaving the same at the usual or last known place of abode or place of business of such person; and such person shall be allowed seven days, or such extended time, not exceeding fourteen days in the whole, as the court shall think fit, from the service of such duplicate, to show cause to the court against the validity of such adjudication; and if such person shall within such time show to the satisfaction of the court that the petitioning creditor's debt, trading and act of bankruptcy upon which such adjudication has been grounded, or any or either of such matters, are insufficient to support such adjudication, and upon such showing no other creditor's debt, trading and act of bankruptcy sufficient to support such adjudication, or such of the said last-mentioned matters as shall be requisite to support such adjudication, in lieu of the petitioning creditor's debt, trading and act of bankruptcy or any or either of such matters, which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the court, the court shall thereupon order (in the form contained in schedule U. to this act annexed, or to the like effect) such adjudication to be annulled, and the same shall by such order be annulled accordingly; but if at the expiration of the said time no cause shall have been shown to the satisfaction of the court for the annulling of such adjudication, the court shall, forthwith after the expiration of such time, cause notice of such adjudication to be given in the London Gazette, and shall thereby appoint two public sittings of the court for the bankrupt to surrender and conform, the last of which sittings shall be on a day not less than thirty days and not exceeding sixty days from such advertisement, and shall be the day limited for such surrender: Provided always, that the court shall have power from time to time to enlarge the time for the bankrupt surrendering himself for such time as the court shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself: Provided also, that if any person so adjudged bankrupt shall, before the expiration of the time allowed for showing cause, surrender himself, and give his consent, testified in writing under

his hand, to such adjudication being advertised, the court, after such consent so given, shall forthwith cause the notice of adjudication to be advertised, and appoint the sittings for the bankrupt to surrender and conform.

Oct. 1861, r. 30, and C. C. O., 1st July, 1863, r. 16.]

CV. That forthwith after the insertion of the notice of adjudication in the Gazette, or, if the bankrupt before the expiration of the time allowed for showing cause against the adjudication surrender himself and give consent to such insertion, forthwith after such surrender, the bankrupt shall (if thereto required by the official assignee) deliver up to the official assignee upon oath before the court, or before a master ordinary or extraordinary in chancery, or justice of the peace, all books of account, papers and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every bankrupt, not in prison or custody, shall at all times after such surrender attend the assignees, upon every reasonable notice in writing for that purpose given by them to him or left at his usual or last known place of abode, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may at all seasonable times before the expiration of such time as shall be allowed to him to finish his examination, inspect his books, papers and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him; and every such bankrupt, after he shall have obtained his certificate, shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the assignees to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in or protecting the said estate, for which attendance he shall be paid five shillings per day by the official assignee out of his estate.

Bankrupt to deliver up his books of account to the official assignee upon oath;

[Modified. See act of 1861, sect. 120.]

to attend assignees;

to be at liberty to inspect books, &c.;

[See act of 1861, sect. 143.]

after allowance of certificate, to attend assignees in settling accounts.

Allowance for attendance.

CVI. That in all cases where it shall be made to appear to the satisfaction of the court that there is reason to suspect and believe that any property of any bankrupt is concealed in any house or other place not belonging to such bankrupt, the court may grant a search warrant to the messenger and his assistants, or other person appointed by the court, and it shall be lawful for such messenger and his assistants, or other person, to execute such warrant according to the tenor thereof; and such messenger and his assistants, or other person, shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen or concealed; and every such search warrant shall be in the form contained in schedule V. to this act annexed, or to the like effect.

Search warrants may be granted.

[C. C. form, 41.]

CVII. That no action shall be brought against any messenger or his assistants, or other person appointed by the court, for anything done in obedience to any warrant of the court, unless demand of the perusal and copy of such warrant hath been made, or left at the usual place of abode of such messenger or his assistant, or other person, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand, and compliance therewith, any action be brought against such messenger or assistant, or person so appointed, without making the petitioning creditor defendant, if living, the jury, at the trial of such action, on the production and proof of such warrant, shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the court by which such warrant shall have been granted; and if such action be brought against the petitioning creditor and the messenger or assistant, or person so appointed, the jury shall, on proof of such warrant, give their verdict for such messenger or assistant, or person so appointed, notwithstanding any such defect of jurisdiction; and if the verdict shall be given against the petitioning creditor the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to the messenger and his assistant, or person so appointed as aforesaid.

No action to be brought against persons acting in obedience to warrant of the court.

[See also act of 1861, sect. 228.]

CVIII. That in any such action brought against the petitioning creditor, either alone or jointly with any messenger or assistant, or other person so appointed by the court, for anything done in obedience to the warrant of the court, proof by the plaintiff in such action that the defendant or defendants, or any of

Proof in such actions that defendant is petitioning creditor sufficient to render him liable.

them, is or are petitioning creditor or creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

CIX. That it shall be lawful for any messenger of the court and his assistants acting under warrant of the court to break open any house, chamber, shop, warehouse, door, trunk or chest of any bankrupt where such bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, it shall be lawful for the messenger and his assistants to seize any property of the bankrupt (his necessary wearing apparel only excepted) in the custody or possession of such bankrupt or of any other person, in any prison or place where such bankrupt is in custody.

CX. That it shall be lawful for the messenger and his assistants acting under warrant of the court to break open any house, chamber, shop, warehouse, door, trunk or chest of the bankrupt in Ireland where any of his property shall be reputed to be, and to seize the same; provided such warrant shall have been verified upon oath before and backed or endorsed by the mayor or chief magistrate of the city, borough or town corporate where or near to which the same is executed; and provided also, that the messenger shall, before a justice of the peace residing in the county where such property shall be reputed to be, depose upon oath that he is the person named in such warrant.

CXI. That if in the execution of any such warrant of seizure granted by the court it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk or chest of the bankrupt in Scotland, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property, such warrant, after having been verified upon oath, may be backed or endorsed by any judge ordinary or justice of the peace in Scotland, who are hereby required, within their respective jurisdictions, to back or endorse the same; and such warrant so endorsed shall be sufficient authority to the messenger or his assistant bringing such warrant, and to all officers of the law in Scotland, to execute the same within the county or burgh wherein it is so endorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk or chest of such bankrupt, and to seize and take possession of such property, to be distributed under the bankruptcy, or otherwise dealt with according to law.

CXII. That if the bankrupt be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this act limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his certificate be allowed as the court shall from time to time by endorsement upon the summons of such bankrupt think fit to appoint; and whenever any bankrupt is in prison or in custody under any process, attachment, execution, commitment, or sentence, the court may, by warrant directed to the person in whose custody he is confined, cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the court for bringing up such bankrupt; and where any person who has been adjudged bankrupt, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the court may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit: Provided always, that the court shall not order such release where it shall appear by any judgment, order, commitment or sentence under which the bankrupt is in prison or in custody, or by the record or entry of any such judgment, order, commitment or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action

Messenger may break open the bankrupt's doors, &c. and seize upon his body or property.

[See additional forms, 42.]

[C. C. form, 36.]

Execution of warrant in Ireland.

[See additional forms, 43.]

Execution of warrant in Scotland.

[See additional forms, 43.]

If bankrupt be not in prison or custody, to be free from arrest in coming to surrender, &c., and if in prison, may be brought up by warrant to be examined or to surrender, &c., and if in prison for debt the court may, except in certain cases, order his release absolutely or conditionally.

[See additional forms, 26, 31, 33—36.]

[C. C. forms, 8, 10—13.]

for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy: Provided also, that such release shall in nowise affect any rights of the creditor at whose suit the bankrupt may be in prison or in custody against the bankrupt, except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the court.

CXIII. That if any bankrupt shall be arrested for debt, or on any escape warrant in coming to surrender, or shall after his surrender and while protected by order of the court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at Westminster, in the name of such bankrupt, with full costs of suit.

If arrested, to be discharged on producing protection.

[See additional forms, 81, and C. C. forms, 5, 8, 17, 22.]

CXIV. That the petitioning creditor shall at his own costs file and prosecute his petition, until the choice of assignees by the creditors; and the court shall, at or after the sitting for such choice, make order for the payment thereof out of the estate of the bankrupt, in course of priority to be settled by any general rule or order to be made in pursuance of this act.

Petitioning creditor to proceed at his own costs, until choice of assignees. [G. O., 19th Oct. 1852, rr. 114, 115.]

CXV. That no fiat in bankruptcy shall be annulled, nor any petition for adjudication of bankruptcy dismissed, nor any adjudication reversed, by reason only that the fiat, petition or adjudication, or act of bankruptcy, has been concerted or agreed upon between the bankrupt, his solicitor or agent, or any of them, and any creditor or other person.

No fiat to be superseded, &c. by reason only of concert.

CXVI. That if any bankrupt shall die after adjudication, the court may proceed in the bankruptcy as if such bankrupt were living.

Court may proceed notwithstanding death of bankrupt.

CXVII. That the court may summon any bankrupt before it, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time appointed by the court (having no lawful impediment made known to and allowed by the court at such time), it shall be lawful for the court, by warrant, to authorize and direct any person or persons the court shall think fit to apprehend and arrest such bankrupt, and bring him before the court; and upon the appearance of such bankrupt, or if such bankrupt be present at any sitting of the court, it shall be lawful for the court to examine such bankrupt after he shall have made and signed the declaration contained in the schedule W. (a) to this act annexed, either by word of mouth or on interrogatories in writing, touching all matters relating to his trade, dealings or estate, or which may tend to disclose any secret grant, conveyance or concealment of his lands, tenements, goods, money or debts, and to reduce his answers into writing, which examination so reduced into writing the said bankrupt shall sign and subscribe.

Court may summon and examine bankrupt.

[See additional forms, 121—128.]

[See act of 1861, sect. 211.]

[C. C. form, 35.]

(a) Superseded sched. E., act of 1861. See also *post*, sect. 246, repealed, and 260 in force.

CXVIII. That it shall be lawful for the court to summon before it the wife of any bankrupt, and to examine her, after she shall have made and signed the declaration contained in schedule W. (a) to this act annexed, either by word of mouth or interrogatories in writing, for the finding out and discovery of the estate, goods and chattels of such bankrupt, concealed, kept or disposed of by such wife, in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the court, or for refusing to be sworn and examined, or for refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the court, as is hereinafter provided.

Court may summon and examine the bankrupt's wife.

[C. C. form, 35.]

(a) Superseded, act of 1861, sched. E. See act of 1861, sect. 211. See also *post*, sect. 246, repealed, and 260 in force.

CXIX. That if in any case it shall be proved to the satisfaction of the court that any bankrupt is keeping out of the way, and cannot be personally served with a summons, and that due pains have been taken to effect such personal service,

If bankrupt be keeping out of the way, or be about to quit

England, &c.,
court may issue
warrant.

[Additional forms,
44.]

Court empowered
to summon per-
sons suspected
of having bank-
rupt's property,
&c.

[See additional
forms, 129—132.]

Service of sum-
mons where per-
son keeps out of
the way.

Power to examine
persons sum-
moned or present
at any sitting.

In a case of debts
admitted to be
due to bankrupt's
estate, court may
order payment;
and

[See additional
forms, 104—107;
C. C. forms, 82,
83.]

[G. O., 19th Oct.
1852, rr. 100, 113,
and sched. to rr.
106—113.]

such order to
have effect of
judgment.

Presence of attor-
ney on behalf of
party making the
admission.

or that there is probable cause for believing that he is about to quit England, or to remove or conceal any of his goods or chattels, unless he be forthwith apprehended, it shall be lawful for such court, by warrant, to authorize and direct any person or persons it shall think fit to apprehend and arrest such bankrupt, and bring him before the court, to be examined in like manner as if he appeared upon a summons.

CXX. That after adjudication it shall be lawful for the court to summon before it any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, or any person the court may believe capable of giving information concerning the person, trade, dealings or estate of the bankrupt, or concerning any act of bankruptcy committed by him, or any information material to the full disclosure of his dealings; and the court may require such person to produce any books, papers, deeds, writings or other documents in his custody or power which may appear to the court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the court is authorized to inquire into; and if such person so summoned as aforesaid shall not come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), it shall be lawful for the court, by warrant, to authorize and direct the person or persons therein named for that purpose to apprehend and arrest such person, and bring him before the court for examination.

CXXI. That where it shall be shown by affidavit to the satisfaction of the court that any person to whom any such summons is directed as aforesaid is keeping out of the way, and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the court to order by indorsement upon the summons that the delivery of a copy of such summons to the wife or servant or some adult inmate of the house or family of the person at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant or inmate, shall be equivalent to personal service, and in every such case the service of such summons in pursuance of such order shall be and be deemed and taken to be of the same force and effect, to all intents and purposes, as if the party to whom such summons was directed had been personally served therewith.

CXXII. That upon the appearance of any person summoned or brought before the court upon any warrant as aforesaid, or if any person be present at any sitting of the court, it shall be lawful for the court to examine every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings or estate of any bankrupt, or concerning any act or acts of bankruptcy by any bankrupt committed, and to reduce into writing the answers of every such person, and such answers so reduced into writing such person examined is hereby required to sign and subscribe.

CXXIII. That if any such person examined as last aforesaid shall in and by his examination, signed and subscribed as aforesaid, and also in and by a separate writing in the form contained in the schedule X. to this act annexed, admit that he is indebted to the bankrupt in any sum of money upon the balance of accounts, it shall be lawful for the court, if he think fit, to order (in the form contained in schedule Y. to this act annexed, or to the like effect) that such person shall forthwith, or at such time and in such manner as to the court may seem expedient, pay the amount so admitted, in full discharge thereof, to the official assignee, together with the costs of and incident to the summons of such person, if the court think fit to award costs, or the court may, if it think fit, in the said form contained in schedule Y. to this act annexed, order the official assignee to pay the costs of the person summoned out of the estate of the bankrupt; and every such order shall have the effect of a judgment in her majesty's superior courts of common law, and may be enforced accordingly: Provided always, that no such order shall be made unless there be present some attorney of one of the superior courts on behalf of the person making such admission, expressly named by him, or, upon his refusal to name such attorney, named by the court to act upon his behalf, to inform him of the effect of such admission, before the same is signed and subscribed as aforesaid, and that such attorney do sign his name

as a witness to such admission, in the form contained in the schedule Y. (a) to this act annexed: Provided also, that if part only of the sum actually due be so admitted, or if the court make an order for part only of the sum admitted, the residue may be recoverable in the same manner in all respects as if no such admission or order had been made.

(a) This seems a mistake in the print for X. This is now immaterial, however, for the proviso is altered in this particular by the act of 1861, sect. 111.

CXXIV. That the court may order that for a period of three months from the date of any such order all post letters directed or addressed to any bankrupt at the place of which he shall be described in the petition for adjudication of bankruptcy shall be re-directed, re-addressed, sent or delivered by the postmaster-general, or the officers acting under him, to the official or other assignee or other person named in such order; and upon notice by transmission of a duplicate of any such order to the postmaster-general or the officers acting under him, by the official or other assignee or other person named in such order, of the making of such order, it shall be lawful for the postmaster-general or such officers as aforesaid, in England, Scotland or Ireland, to re-address, re-direct, send or deliver all such post letters to the official or other assignee or other person named in such order accordingly; and the court may, upon any application to be made for that purpose, renew any such order for a like or for any other less period as often as may be necessary.

Court may order letters addressed to bankrupt to be re-directed or delivered to official assignee, &c.

[G. O., 12th Oct. 1861, r. 17; see additional forms, 45.]

[C. C. O., 1st July, 1863, r. 11; C. C. form, 46.]

And with respect to the power of the court over certain descriptions of property, be it enacted,

CXXV. That if any bankrupt at the time he becomes bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration or disposition as owner, the court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy: Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an act made in the parliament holden in the eighth and ninth years of the reign of her majesty, intituled "An Act for the registering of British Vessels," or any of the acts therein mentioned.

19.
Consequences of Adjudication in certain Cases.

Goods in the possession, order or disposition of the bankrupt to be deemed his property.

[See additional forms, 102; C. C. form, 39.]

Proviso for assignments of vessels under 8 & 9 Vict. c. 89.

CXXVI. That if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration,) have conveyed, assigned, or transferred to any of his children, or to any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or into any other person's name, the court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy; and every such sale shall be valid against the bankrupt, and such children and persons, and against all persons claiming under him.

Power of court over certain conveyances, &c. made by bankrupt.

CXXVII. That if any real or personal estate or debts of any bankrupt be extended, after he shall have become bankrupt, by any person, under pretence of his being an accountant of or debtor to the queen, the court may examine upon oath whether the said debt was due to such debtor or accountant upon any contract originally made between such accountant and the bankrupt; and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person, the court may order such real and personal estate or debts to be sold, for the benefit of the creditors under the bankruptcy, and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted, or assigned by the court shall have and may recover the same against any person who shall detain the same.

Court may proceed when the bankrupt by fraud makes himself accountable to the crown.

CXXVIII. That if any bankrupt shall have any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, standing in his name in his own right, it shall be lawful for the court, by writing, to order all persons whose act or consent is thereto necessary

Where bankrupt beneficially entitled to stock, court may make order for transfer.

[See additional forms, 103.]

to transfer the same into the name of the assignees, and to pay all dividends upon the same to the official assignee; and all such persons whose act or consent is so necessary are hereby indemnified for all things done or permitted pursuant to such order.

Distress not to be available for more than one year's rent due; the landlord to prove for the residue.

CXXIX. That no distress for rent made and levied after an act of bankruptcy upon the goods or effects of any bankrupt, whether before or after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, shall be available for more than one year's rent accrued prior to the date of the fiat or the day of the filing of such petition, but the landlord or person to whom the rent shall be due shall be allowed to come in as a creditor for the overplus of the rent due and for which the distress shall not be available.

Where bankrupt is a trustee, the lord chancellor may order conveyance or assignment to another trustee.

CXXX. That if any bankrupt shall as trustee be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, it shall be lawful for the lord chancellor, on the petition of the person entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees and all persons whose act or consent thereto is necessary to convey, assign, or transfer the said estate, interest, stock, funds, or annuities, to such person as the lord chancellor shall think fit, upon the same trusts as the said estate, interest, stock, funds, or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the lord chancellor shall direct.

Titles to property sold not to be impeached, unless proceedings taken to annul, and duly prosecuted.

CXXXI. That no title to any real or personal estate sold under any bankruptcy shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the fiat or petition for adjudication, or in any of the proceedings under the same, unless the bankrupt shall within the time allowed by this act have commenced proceedings to dispute, dismiss, or annul the fiat, petition, or adjudication, and duly prosecuted the same.

The court, after adjudication, may order any treasurer, &c. or agent of the bankrupt, to deliver all monies, &c.
[G. O., 19th Oct. 1852, rr. 100—106.]

CXXXII. That after the adjudication of bankruptcy in any case shall have been advertised in the London Gazette, it shall be lawful for the court to order any treasurer or other officer, or any banker, attorney, or solicitor, or other agent of the bankrupt, to pay and deliver over to the official assignee, or to the bank of England, to the credit of the accountant in bankruptcy, according to the rules which may be in force with respect to payment into the bank of England of monies due to any bankrupt's estate, all monies or securities for money in his custody, possession, or power as such officer or agent, and which he is not by law entitled to retain as against the bankrupt or his assignees.

20.
Of Transactions not affected by Bankruptcy.

Payments, conveyances, contracts, &c., executions against lands (if executed by seizure), and against goods (if executed by seizure and sale) to be valid, if no notice of prior act of bankruptcy;

And with respect to transactions with the bankrupt, and executions against his property, up to the time of the bankruptcy, or within a limited time previously thereto, be it enacted,

CXXXIII. That all payments really and bonâ fide made by any bankrupt, or by any person on his behalf, before date of the fiat or the filing of a petition for adjudication of bankruptcy, to any creditor of such bankrupt, and all payments really and bonâ fide made to any bankrupt before the date of the fiat or the filing of such petition, and all conveyances by any bankrupt bonâ fide made and executed before the date of the fiat or the filing of such petition, and all contracts, dealings, and transactions by and with any bankrupt really and bonâ fide made and entered into before the date of the fiat or the filing of such petition, and all executions and attachments against the lands and tenements of any bankrupt bonâ fide executed by seizure, and all executions and attachments against the goods and chattels of any bankrupt bonâ fide executed and levied by seizure and sale before the date of the fiat or the filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with or paying to or being paid by such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of so executing or levying such

execution or attachment, or at the time of making any sale thereunder, notice of any prior act of bankruptcy by him committed: provided also, that nothing herein contained shall be deemed or taken to give validity to any payment or to any delivery or transfer of any goods or chattels made by any bankrupt, being a fraudulent preference of any creditor of such bankrupt, or to any conveyance or equitable mortgage made or given by any bankrupt by way of fraudulent preference of any creditor of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit actionem or judge's order obtained by consent given by any bankrupt by way of fraudulent preference.

CXXXIV. That no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed shall be impeached by reason thereof, unless a fiat or petition for adjudication of bankruptcy shall have been sued out or filed within twelve months after such act of bankruptcy.

CXXXV. That every warrant of attorney to confess judgment in any personal action, given by any bankrupt after the commencement of this act, and within two months of the filing of a petition for adjudication of bankruptcy by or against such bankrupt, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every cognovit actionem or consent to a judge's order for judgment given by any bankrupt, at any time after the commencement of this act, and within two months of the filing of any such petition in any action commenced by collusion with the bankrupt, and not adversely, or purporting to have been given in an action, but having been in fact given before the commencement of any action against the bankrupt, such bankrupt being unable to meet his engagements at the time of giving such warrant of attorney, cognovit actionem, or consent (as the case may be) shall be deemed and taken to be null and void, whether the same shall have been given by such bankrupt in contemplation of bankruptcy or not.

CXXXVI. And be it enacted, that if after the commencement of this act any warrant of attorney to confess judgment in any personal action, or any cognovit actionem in any personal action, shall have been given by any such trader, and such warrant of attorney or cognovit actionem, or a true copy thereof, shall not have been filed with the officer acting as clerk of the docquets and judgments in the court of queen's bench within twenty-one days next after the execution thereof, in manner and form provided by an act passed in the third year of the reign of his late majesty king George the fourth, intituled "An Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess Judgment," every such warrant of attorney and cognovit actionem shall be deemed fraudulent, null, and void, to all intents and purposes whatever; and if any such warrant of attorney or cognovit actionem which shall be so filed as aforesaid shall have been given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment on which such warrant of attorney or cognovit actionem shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such warrant of attorney or cognovit actionem shall be null and void to all intents and purposes whatever.

CXXXVII. And be it enacted, that every judge's order made by consent given after the commencement of this act by any such trader defendant in any personal action, and whereby the plaintiff in such action shall be authorized forthwith after the making of such order, or at any future time, to sign or enter up judgment, or to issue or take out execution in such action, and whether such order shall be made subject to any defeazance or condition or not, in case the action in which such order shall be made shall be in the court of queen's bench, or in case the action wherein the same is made shall be in any other court, a true copy of such order shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer acting as clerk of the docquets and judgments in the said court of queen's bench within twenty-one days after the making of such order, in like manner as a warrant of attorney in any personal action and a cognovit actionem given by any defendant in any personal action, or copies thereof and affidavits of the execution thereof respectively, may be filed with the said clerk

but nothing herein to give validity to payments, &c. by way of fraudulent preference.

Bonâ fide purchases not to be impeached by notice of act of bankruptcy, unless fiat, &c. be sued out within twelve months after the act of bankruptcy.

21.

Of Warrants of Attorney, &c.

Certain warrants of attorney, cognovits and consents to judge's order, given within two months of filing petition, to be null and void.

Warrants of attorney and cognovits actionem given by any trader to be void, unless the same or a copy thereof be filed, &c. within twenty-one days after the execution thereof.

3 Geo. 4, c. 39.

Judge's order obtained by consent given by any trader defendant to be void, unless the same or a copy thereof be filed within twenty-one days, in like manner as warrants of attorney and cognovits actionem.

3 Geo. 4, c. 39.

6 & 7 Vict. c. 66.

within the space of twenty-one days after such warrant of attorney or cognovit actionem shall have been executed, otherwise such judge's order, and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be null and void to all intents and purposes whatever; and the provisions respectively contained in the said act passed in the third year of the reign of his late majesty king George the fourth, intituled "An Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess Judgment," and in an act passed in the parliament holden in the sixth and seventh years of the reign of her majesty, intituled "An Act to enlarge the Provisions of an Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess Judgment," for liberty to file warrants of attorney and cognovits actionem, or copies thereof, with the clerk of the docquets and judgments, and for the said clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search and filing and taking office copies, shall extend and be applicable to every such judge's order, in like manner as to warrants of attorney and cognovits actionem mentioned in the said acts.

22.

*Exemptions from
Stamp Duty, &c.*

Deeds and other instruments relating to bankruptcy not liable to stamp duty.

CXXXVIII. And be it enacted, that no deed, conveyance, assignment, surrender, admission, or other assurance of or to or relating solely to any freehold, leasehold, copyhold, or customary messuages, lands or tenements, or to any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in, any messuages, lands, tenements, or personal estate, being the estate of or belonging to any bankrupt, or part or parcel thereof, and which after the execution of such deed, conveyance, assignment, surrender or assurance respectively shall, either at law or in equity, be or remain the estate and property of such bankrupt, or of the assignee appointed or chosen under any bankruptcy, and no power of attorney, writ of supersedeas and procedendo, order, certificate of conformity, affidavit, or other instrument or writing whatsoever relating solely to the estate or effects of any bankrupt, or to any part thereof, or to any proceeding under any bankruptcy, and no affidavit, bond, or other proceeding under this act, and no advertisement inserted in the London Gazette relating solely to matters in bankruptcy, shall be liable to any stamp duty, or to any other duty whatsoever, save and except such stamp duty as is mentioned in schedule C. to this act annexed.

23.

*Of the Choice of
Assignees, their
Rights and Duties.*

Assignees of the bankrupt's estate, when and how chosen.

[*Altered by act of
1861, sect. 116.*]

Court may reject or remove any person chosen as unfit.

And with respect to the choice of assignees, and their rights and duties, be it enacted,

CXXXIX. That at the first public sitting appointed by the court under any bankruptcy, or at any adjournment thereof, assignees of the bankrupt's estate and effects shall and may be chosen and appointed, and all creditors who have proved debts to the amount of ten pounds and upwards shall be entitled to vote in such choice, and also any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath before the court vivâ voce; and the choice and appointment shall be made by the major part in value of the creditors so entitled to vote: Provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be an assignee, or to remove any assignee, and upon such rejection or removal a new choice and appointment of another assignee shall be made in like manner.

Joint creditor entitled to prove under separate estate, for the purpose of voting in the choice of assignees.

CXL. That if one or more of the partners of a firm be adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt, for the purpose only of voting in the choice of assignees, and of being heard against the allowance of the bankrupt's certificates, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the bankrupt until all the separate creditors shall have received the full amount of their respective debts.

Personal estate to vest in assignees.

CXLI. That when any person shall have been adjudged a bankrupt, all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed or come to him, before he shall have obtained

his certificate, and all debts due or to be due to him, wheresoever the same may be found or known, and the property, right, and interest in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the bankrupt, by virtue of their appointment; and after such appointment, neither the bankrupt, nor any person claiming through or under him, shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the city of London or otherwise, but such assignees shall have like remedy to recover the same in their own names as the bankrupt himself might have had if he had not been adjudged bankrupt.

CXLII. That when any person shall have been adjudged a bankrupt, all lands, tenements, and hereditaments, except copy or customaryhold, in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to her majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments, and of which he might, according to the laws of the several countries, dominions, plantations or colonies, have disposed, and all such lands, tenements and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt, before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the bankrupt, by virtue of their appointment, without any deed of conveyance for that purpose; and as often as any such assignee or assignees shall die, or be lawfully removed or displaced, and a new assignee or assignees shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed shall by virtue of such appointment vest in the new assignee or assignees, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose.

Real estate to vest in assignees.

CXLIII. That where according to law any conveyance or assignment of any real or personal property of a bankrupt would require to be registered, enrolled or recorded in any registry office in England, Wales or Ireland, or in any registry office, court or other place in Scotland, or in any of the dominions, plantations or colonies belonging to her majesty, then in every such case the certificate of the appointment of assignees of the estate and effects of the bankrupt shall be registered in the registry office, court or place wherein such conveyance or assignment would require to be registered, enrolled or recorded, and such registry shall have the like effect to all intents and purposes as the registry, enrolment or recording of such conveyance or assignment would have had; and the title of any purchaser of any such property for valuable consideration, without notice of the bankruptcy, who shall have duly registered, enrolled or recorded his purchase deed previous to the registry hereby directed, shall not be invalidated by reason of such appointment of assignees, or of the vesting of such property in them consequent thereupon, unless the certificate of such appointment shall be registered as aforesaid, within the times following; (that is to say,) as regards the united kingdom of Great Britain and Ireland, within two months from the date of such appointment, and as regards all other places within twelve months from the date thereof.

Where a conveyance of the property of a bankrupt would require to be registered, the certificate of appointment of the assignee shall be registered.

CXLIV. That no assignee of any bankrupt's estate, nor any purchaser from any such assignee of any goods, chattels, stock or crop, being part of the estate of any bankrupt engaged or employed in husbandry on any lands let to farm, shall take, use or dispose of any hay, straw, grass or grasses, turnips or other roots, or any other produce of such lands, or any manure, compost, ashes, seaweed or other dressings intended for such lands, and being thereon, in any other manner or for any other purpose than such bankrupt so employed in husbandry ought to have taken, used or disposed of the same if he had not been adjudged bankrupt.

Assignees not to take crop in any other way than bankrupt would have been entitled to do.

CXLV. That if the assignees of the estate and effects of any bankrupt having or being entitled to any land either under a conveyance to him in fee or under an agreement for any such conveyance subject to any perpetual yearly rent reserved by such conveyance or agreement, or having or being entitled to any lease or agreement for a lease, shall elect to take such land or the benefit of such

Bankrupt not liable to rents or covenants in conveyances, leases, &c.; and if assignees decline to determine

whether they will accept conveyance, &c., any person entitled may apply to the court.

[See act of 1861, sect. 131.]

[G. O., 12th Oct. 1861, r. 17.]

Vendor of estate in lands may compel assignees to elect whether they will abide by or decline the agreement for sale.

[G. O., 12th Oct. 1861, r. 17.]

Assignees may execute powers previously vested in bankrupt.

Court may order bankrupts to join in conveyances.

[G. O., 12th Oct. 1861, r. 17.]

Conditional estates granted by the bankrupt may be redeemed by assignees.

Assignees may appoint the bankrupt to superintend the management of the estate.

[G. O., 12th Oct. 1861, r. 17.]

Assignees to be subject to orders of the court.

[See additional forms, 110—116.]

conveyance or agreement, or such lease or agreement for a lease, as the case may be, the bankrupt shall not be liable to pay any rent accruing after the issuing of the fiat or filing of the petition for adjudication of bankruptcy against him, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants or agreements in any such conveyance or agreement, or lease or agreement for a lease; and if the assignees shall decline to take such land, or the benefit of such conveyance or agreement, or lease or agreement for a lease, the bankrupt shall not be liable if within fourteen days after he shall have had notice that the assignees have declined he shall deliver up such conveyance or agreement, or lease or agreement for a lease, to the person then entitled to the rent, or having so agreed to convey or lease, as the case may be; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such land or conveyance or agreement for conveyance, or such lease or agreement for a lease, any person entitled to such rent, or having so conveyed or agreed to convey, or leased or agreed to lease, or any person claiming under him, shall be entitled to apply to the court, and the court may order them to elect and deliver up such conveyance or agreement for conveyance, or lease or agreement for a lease, in case they shall decline the same, and the possession of the premises, or may make such other order therein as it shall think fit.

CXLVI. That if any bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, may apply to the court, and the court may thereupon order them to deliver up the agreement, and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as such court shall think fit.

CXLVII. That all powers vested in any bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees, for the benefit of the creditors, in such manner as the bankrupt might have executed the same.

CXLVIII. That it shall be lawful for the court, upon the application of the assignees, or of any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the adjudication, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be stopped from objecting to the validity of such conveyance; and all estate, right or title which such bankrupt had therein shall be as effectually barred by such order as if such conveyance had been executed by him.

CXLIX. That if any bankrupt shall have granted, conveyed, assured or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money or other performance, according to such condition, as fully as the bankrupt might have done; and after such tender, payment or performance such real or personal estate may be sold and disposed of for the benefit of the creditors.

CL. That in every case the assignees may, with the approbation of the court, appoint the bankrupt himself to superintend the management of the estate, or to carry on the trade for behoof of the creditors, and in all or any other respects they may think fit to aid them in administering the bankrupt's estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate.

CLI. That the assignees shall be subject to the orders of the court in their conduct as assignees; and it shall be lawful for the court at all times to summon the assignees, and require them to produce all books, papers, deeds, writings and other documents relating to the bankruptcy in their possession, and to direct them to pay and deliver over to the official assignee all monies, books, papers, deeds, writings and other documents which may have come to their possession or custody as such assignees.

CLII. That if any person adjudged bankrupt shall at the time of the adjudication of bankruptcy be a member of a firm, it shall be lawful for the court to authorize the assignees, upon their application, to commence or prosecute any action at law or suit in equity, in the name of such assignees and of the remaining partner, against any debtor of the partnership, and such judgment, decree or order may be obtained therein as if such action or suit had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action or suit is instituted such release shall be void; provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit be claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit, in such manner as the court may direct; and that it shall be lawful for such court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action or suit as such court shall direct.

In case of a member of a firm becoming bankrupt, the court may authorize action or suit in name of the assignees and of the remaining partner.

Partner to have notice and be at liberty to show cause.

Court may direct partner to have part of proceeds.

CLIII. That the assignees, with the leave of the court first obtained, upon application to such court, but not otherwise, may commence, prosecute or defend any action at law or suit in equity which the bankrupt might have commenced and prosecuted or defended, and in such case the costs to which they may be put in respect of such suit or action shall be allowed out of the proceeds of the estate and effects of the bankrupt; and with like leave of the court, after notice to such creditors, and subject to such condition (if any) as to obtaining the consent of creditors, or any proportion of them, as the court shall think fit to direct, the assignees may take such reasonable part of any debts due to the bankrupt's estate as may by composition be gotten, or may give time or take security for the payment of such debts, and may submit to arbitration any difference or dispute between the assignees and any other person for or on account or by reason of anything relating to the estate and effects of the bankrupt.

Assignees may institute or defend actions or suits, and compound for debts due to the estate, or submit disputes to arbitration.

[G. O., 12th Oct. 1861, r. 17.]

CLIV. That if the assignees shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of any of her majesty's superior courts of law at Westminster, whether such agreement contain a clause to that effect or not.

Reference to arbitration may be made a rule of court.

CLV. That all persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the fiat be afterwards superseded, or the adjudication of bankruptcy, or petition for adjudication, be afterwards annulled or dismissed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him; and all persons who shall, without action or suit *bonâ fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person as aforesaid in respect of the same, or any person claiming under him, provided the persons so delivering up any real or personal estate, or paying any debt, shall not have had notice of an action, suit or other proceeding to dispute or annul the fiat or adjudication or petition for adjudication, and such action, suit or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this act.

If fiat, petition or adjudication be annulled, &c., persons from whom the assignees have recovered, or who have *bonâ fide* paid the assignees, &c., discharged from claims by the bankrupt.

CLVI. That if any assignee indebted to the estate of which he is such assignee in respect of money, being part of the estate of the bankrupt, retained or employed by him, become bankrupt, and obtain his certificate, it shall have the effect only of freeing his person from arrest and imprisonment, but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children, excepted) shall remain liable for so much of his debt to the estate of which he was assignee as shall not be paid by dividends under his bankruptcy, and for interest at the rate of five per cent. per annum on the whole debt.

If assignee indebted to bankrupt's estate become bankrupt, his certificate shall not discharge his future effects in respect of such debt.

CLVII. That whenever an assignee shall die or be removed, or a new assignee shall be chosen, no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new

Suits not to abate by death or removal of assignees.

If assignees commence action before time allowed to dispute the bankruptcy has elapsed, debtor to estate may pay money into court.

Limitation of actions.

General issue.

Costs.

24.
Last Examination.

The bankrupt to prepare and file a balance sheet and accounts, &c.

[Repealed; but see act of 1861, sect. 141.]

Bankrupts apprehended by warrant.

Court may adjourn last examination *sine die*.

assignee to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he had originally commenced the same.

CLVIII. That if the assignees commence any action or suit for any money due to the bankrupt's estate before the time allowed for the bankrupt to dispute the bankruptcy shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the court in which such action or suit is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed until such time shall have elapsed; and if within that time the bankrupt shall not have commenced such action, suit or other proceeding as allowed by this act, and prosecuted the same with due diligence, the money shall be paid out of court to the official assignee, but otherwise shall abide the event of such action, suit or other proceeding, and upon such event shall be paid out of court, either to the official assignee or the person adjudged bankrupt, as the court shall direct; and after such payment of money so made into court it shall not be lawful for the person so adjudged bankrupt to proceed against the defendant for recovery of the same money.

CLIX. That every action brought against any person for anything done in pursuance of this act shall be commenced within three months next after the fact committed; and the defendant in any such action may plead the general issue, and give this act and the special matter in evidence at the trial, and that the same was done by authority of this act; and if it shall appear so to have been done, or that such action was commenced after the time limited as aforesaid for bringing the same, the jury shall find for the defendant; and if there be a verdict for the defendant, or if the plaintiff shall be nonsuited, or discontinue his action or suit, after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall receive such full and reasonable indemnity as to all costs, charges and expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

And with respect to the last examination, be it enacted,

CLX. That the bankrupt shall prepare such balance-sheet and accounts, and in such form as the court shall direct, and shall subscribe such balance-sheet and accounts, and file the same in court, and deliver a copy thereof to the official assignee, ten days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose; and such balance-sheet and accounts, before such last examination, may be amended from time to time as occasion shall require, and such court shall direct; and the bankrupt shall make oath of the truth of such balance-sheet and accounts, whenever he shall be duly required by the court so to do; and the last examination of the bankrupt shall in no case be passed unless his balance-sheet shall have been duly filed as aforesaid; and the court may, on the application of the assignees or of the bankrupt, make such allowance out of the estate of the bankrupt for the preparation of such balance-sheet and accounts, and to such person as the court shall think fit, in any case in which it shall be made to appear to the satisfaction of the court, from the nature of the accounts or other good cause, that the bankrupt required assistance in that behalf.

CLXI. That if any bankrupt apprehended by any warrant of the court shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

CLXII. That it shall be lawful for the court at the time appointed for the last examination of the bankrupt, or at any enlargement or adjournment thereof, to adjourn such examination *sine die*; and in such case the bankrupt shall be free from arrest or imprisonment for such time (if any) as such court shall from time to time, by indorsement on the summons of the bankrupt, think fit to appoint.

CLXIII. That whenever any bankrupt is in prison or in custody under any process, attachment, execution, commitment, or sentence, the court may appoint a person to attend him from time to time, to produce to him his books, papers and writings, in order that he may prepare his balance-sheet, and show the particulars of his estate and effects, previous to his last examination and discovery thereof.

If bankrupt in prison or custody, court may appoint a person to attend him with books, papers, &c., to enable him to prepare balance sheet. [See act of 1861, sect. 143.]

And with respect to the proof of debts and payments in full, be it enacted,

CLXIV. That at the sittings appointed by the court for the choice of assignees and for the last examination of the bankrupt, and at every adjourned sitting held for either of such purposes, and at every other sitting held for proof of debts and whereof and of the purport whereof ten days' notice shall have been given in the London Gazette, every creditor of the bankrupt may prove his debt by his own oath; and all bodies politic and public companies incorporated, or authorized to sue or bring actions, either by charter or act of parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent, and that he is authorized to make such proof: provided that it shall be lawful for the court to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt, or to require such further proof, and to examine such other persons in relation thereto, as such court shall think fit.

25.
Of Proof of Debts and Payments in full.

When and how debts may be proved; [See additional forms, 55—61; enlarged act of 1861, sects. 144—146; also G. O., 12th Oct. 1861, sched. 15; C. C. forms 47—49] By corporations, &c. [G. O., 19th Oct. 1852, rr. 53, 54.] Creditor may be examined upon oath.

CLXV. That every person with whom any bankrupt shall have really and bonâ fide contracted any debt or demand before the issuing of the fiat or the filing of the petition for adjudication of bankruptcy shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, as if no such act of bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of bankruptcy by such bankrupt committed.

Bonâ fide creditors, in respect of debts contracted after an act of bankruptcy, may prove.

CLXVI. That the court, out of the estate and effects of the bankrupt, shall order payment of all duties of assessed taxes assessed on the bankrupt at the time of his bankruptcy up to the fifth day of April next after the same shall have happened (such payment not exceeding in the whole one year's assessment), and the bankrupt shall not be liable to be assessed to such duties after the said fifth day of April in respect of any article kept and used for the purposes of trade at or before the time of the bankruptcy, which article shall have been seized and surrendered and bonâ fide sold under the bankruptcy, and not kept or used by the bankrupt after the said fifth day of April.

Payment of assessed taxes. [As to rates, see act of 1861, sect. 156; G. O., 12th Oct. 1861, rr. 17, 18.] [C. C. O., 1st July, 1863, r. 11.]

CLXVII. That if any person already appointed or employed or who may be hereafter appointed to or employed in any office in any society established under any of the acts relating to friendly societies, and being intrusted with the keeping of the accounts or having in his hands or possession, by virtue of his office or employment, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall have been or shall become bankrupt, the court shall, upon application made by the order of any such society or any committee thereof, or the major part of them, assembled at any meeting thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all monies and other things belonging to such society, and shall also order payment out of the estate and effects of the bankrupt of all sums of money remaining due which the bankrupt received by virtue of his said office or employment before any other of his debts are paid or satisfied.

If bankrupt an officer of, and have monies, &c. in his hands, belonging to, any friendly society, court to order payment thereof before any of his other debts are satisfied.

[See additional forms, 99.]

CLXVIII. That when any bankrupt shall have been indebted at the time of issuing the fiat or filing the petition for adjudication of bankruptcy to any servant or clerk of such bankrupt in respect of the wages or salary of such servant or clerk, it shall be lawful for the court, upon proof thereof, to order so much as shall be so due, not exceeding three months' wages or salary, and not exceeding thirty pounds, to be paid to such servant or clerk out of the estate of such bankrupt; and such servant or clerk shall be at liberty to prove for any sum exceeding such amount.

Court may order three months' wages or salary to clerks or servants.

[G. O., 12th Oct. 1861, rr. 17, 18; see additional forms, 100; C. C. O., 1st July, 1863, r. 11.]

CLXIX. That when any bankrupt shall have been indebted at the time of issuing the fiat or filing the petition for adjudication of bankruptcy to any

Court may order wages not exceeding 40s. to

labourer or workman.

[*G. O.*, 12th Oct. 1861, rr. 17, 18; see additional forms, 100; *C. C. O.*, 1st July, 1863, r. 11.]

Apprentices to bankrupts discharged from their indentures.

Court may order any sum to be paid in respect of apprentice fees.

[*G. O.*, 12th Oct. 1861, rr. 17, 18; see additional forms, 101; *C. C. O.*, 1st July, 1863, r. 11.]

Mutual debts and credits may be set off, notwithstanding prior act of bankruptcy.

Debts not payable at the time of the bankruptcy may be proved, deducting rebate of interest.

[See act of 1861, sect. 151.]

Sureties and persons liable for the debts of a bankrupt may prove, after having paid such debts.

Obligees in bottomry or respondentia bonds, and assured in policy of insurance, admitted to claim and after loss to prove.

labourer or workman of such bankrupt in respect of the wages or labour of such labourer or workman, it shall be lawful for the court, upon proof thereof, to order so much as shall be so due, not exceeding forty shillings, to be paid to such labourer or workman out of the estate of such bankrupt; and such labourer or workman shall be at liberty to prove for any sum exceeding such amount.

CLXX. That where any person shall have been an apprentice to a bankrupt at the time of the filing of a petition for adjudication of bankruptcy, or of the issuing of a fiat in bankruptcy, the filing of such petition, or the issuing of such fiat, shall be and enure as a complete discharge of the indenture whereby such apprentice was bound; and if any sum shall have been really and bona fide paid, by or on the behalf of such apprentice, to the bankrupt, as an apprentice fee, it shall be lawful for the court, upon proof thereof, to order any sum to be paid out of the estate of the said bankrupt, to or for the use of such apprentice, which such court shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice, and to the time during which such apprentice shall have resided with the bankrupt previous to the filing of such petition or the issuing of such fiat.

CLXXI. That where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the court shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made proveable against the estate of the bankrupt may also be set off in manner aforesaid against such estate, provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed.

CLXXII. That any person who shall have given credit to the bankrupt upon valuable consideration for any money or other matter or thing whatsoever which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given upon any bill, bond, note or other negotiable security, or not, shall be entitled to prove such debt, bill, bond, note or other security as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive at the rate of five pounds per centum per annum, to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

CLXXIII. That any person who at the time of issuing the fiat, or of filing a petition for adjudication of bankruptcy, shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt, (although he may have paid the same after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy,) if the creditor shall have proved his debt under the bankruptcy, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the bankruptcy which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the bankruptcy, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid, after an act of bankruptcy committed by the bankrupt, provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed.

CLXXIV. That the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance, made upon good and valuable consideration, shall be admitted to claim, and, after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors, as if the loss or contingency had happened before the issuing of the fiat or the filing of the petition for adjudication of bankruptcy

against such obligor or insurer ; and the person effecting any policy of insurance upon ships or goods with any person (as a subscriber or underwriter), having become or becoming bankrupt, shall be entitled to prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person so interested is not within the united realm.

Persons effecting insurance admitted to prove loss.

CLXXV. That any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity, which value the court shall ascertain, regard being had to the original price given for such annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the fiat or the filing of the petition for adjudication of bankruptcy.

Annuity creditor admitted to prove.

[See additional forms, 64; see also act of 1861, sect. 154.]

CLXXVI. That it shall not be lawful for any person entitled to any annuity granted by any bankrupt to sue any person who may be collateral surety for the payment of such annuity until such annuitant shall have proved against such bankrupt's estate for the value of such annuity, and for the arrears thereof; and if such surety, after such proof, pay the amount proved, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the annuity subsequent to the bankruptcy shall have become due) pay the sum so proved, he may be sued for the accruing payments of such annuity; until such annuitant shall have paid or satisfied the amount so proved, with interest thereon at the rate of four pounds per centum per annum, from the time of notice of such proof, and of the amount thereof, being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant, in respect of such proof, to the amount so paid or satisfied by such surety, and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant or of such surety in respect of such annuity; provided that such surety shall be entitled to credit, in account with such annuitant, for any dividends received by such annuitant under the bankruptcy before such surety shall have fully paid or satisfied the amount so proved.

Sureties for payment of annuities granted by bankrupt in what manner to come in, under the bankruptcy.

[See also act of 1861, sect. 154.]

CLXXVII. That if any bankrupt shall, before the issuing of the fiat or the filing of a petition for adjudication of bankruptcy, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such fiat or the filing of such petition, the person with whom such debt has been contracted may, if he think fit, apply to the court to set a value upon such debt, and the court is hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividends with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice of any act of bankruptcy by such bankrupt committed.

Debt contingent at the time of the bankruptcy to be proveable for the value thereof ascertained by the court, or if value not ascertained before the contingency has happened, then, after the contingency has happened, amount of debt may be proved.

[See also act of 1861, sect. 154.]

[See additional forms, 65.]

CLXXVIII. That if any trader who shall become bankrupt after the commencement of this act shall have contracted, before the filing of a petition for adjudication of bankruptcy, a liability to pay money upon a contingency which shall not have happened, and the demand in respect thereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not proveable under any other provision of this act, the person with whom such liability has been contracted shall be admitted to claim for such sum as the court shall think fit; and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he shall be admitted to prove such demand, and receive dividends with the other creditors, and, so far as practicable, as if the contingency had happened and the demand had been ascertained before the filing of such petition, but not disturbing former dividends, provided such person had not, at the time such liability was contracted, notice of any act of bankruptcy by such bankrupt committed; Provided also, that where any such claim shall not have, either in whole or in part,

Liability contingent at the bankruptcy may be admitted to claim, and after contingency has happened, and the demand been ascertained, demand may be proved.

[See also act of 1861, sect. 154.]

[See additional forms, 66.]

been converted into a proof within six months after the filing of such petition, it may, upon the application of the assignees at any time after the expiration of such time, and if the court shall think fit, be expunged either in whole or in part from the proceedings.

On bankruptcy of agent intrusted with goods, but which have been pledged by him, owner may prove for amount paid to redeem or for value if the goods be unredeemed.
5 & 6 Vict. c. 39.

CLXXIX. That in case of the bankruptcy of any agent intrusted with the possession of goods within the meaning of an act passed in the parliament holden in the fifth and sixth years of the reign of her present majesty, intituled "An Act to amend the Law relating to Advances bonâ fide made to Agents intrusted with Goods," the owner of any goods so intrusted to such agent, and which shall have been redeemed by such owner in manner provided by the said act after having been pledged by such agent, shall, in respect of the sum paid by him on account of such agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case such goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge, and shall, if he shall think fit, be entitled in either of such cases to prove for or set-off the sums so paid, or the value of such goods, as the case may be.

Interest upon debts, when proveable, though not reserved or agreed for.

CLXXX. That upon all debts or sums certain, payable at a certain time or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the issuing of the fiat or filing of the petition for adjudication of bankruptcy and proveable thereunder, the creditor shall be entitled to prove for interest, to be calculated, at a rate not exceeding four pounds per centum per annum, up to the date of the fiat or the filing of such petition, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

Plaintiff or defendant obtaining judgment, &c. entitled to prove for costs, &c.

[*Enlarged act of 1861, sect. 149.*]

CLXXXI. That if any plaintiff in any action at law or suit in equity, or petitioner in bankruptcy or lunacy, shall have obtained any judgment, decree or order against any person who shall thereafter become bankrupt for any debt or demand in respect of which such plaintiff or petitioner shall prove under the bankruptcy, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankruptcy; and if any defendant shall have obtained any judgment, decree or order in any such action or suit, or in the matter of any such petition, against any person who shall thereafter become bankrupt, such defendant shall be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankruptcy.

Proving debt to be an election not to proceed against the bankrupt by action.

[*See additional forms, 54.*]

CLXXXII. That no creditor who has brought any action or instituted any suit against any bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the bankruptcy, shall prove a debt under such bankruptcy, or have any claim entered upon the proceedings, without relinquishing such action or suit, and the proving or claiming a debt under a fiat or petition for adjudication of bankruptcy by any creditor shall be deemed an election by such creditor to take the benefit of such fiat or petition with respect to the debt so proved or claimed; provided that such creditor shall not be liable to the payment to such bankrupt or his assignees of the costs of such action or suit so relinquished by him, and that where any such creditor shall have brought any action or suit against such bankrupt jointly with any other person or persons, his relinquishing such action or suit against the bankrupt shall not affect such action or suit against such other person or persons; provided also, that any creditor who shall have so proved or claimed, if the fiat or petition for adjudication be afterwards superseded or dismissed, may proceed in the action as if he had not so proved or claimed, and in bailable actions shall be at liberty, under the authority of a judge's order for that purpose, obtained in like manner as may now by law be done, to arrest the defendant de novo, if he has not put in bail below or perfected bail above, or if the defendant has put in or perfected such bail to have recourse against such bail, by requiring the bail below to put in and perfect bail above within the first eight days in term after

notice in the London Gazette of the first superseding or dismissing such fiat or petition, and by suing the bail upon their recognizance, if the condition thereof is broken.

CLXXXIII. That whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of twenty pounds or upwards, that any debt proved is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the court; and it shall be lawful for the court to summon and examine upon oath any person who shall have so proved, together with any person whose evidence may appear to the court to be material, either in support of or in opposition to any such debt; and if the court, upon the evidence given on both sides, or (if the person who shall have proved shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors, shall be of opinion that such debt is not due, either wholly or in part, the court shall be at liberty to expunge the same, either wholly or in part, from the proceedings; provided that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the court shall adjudge to the creditor who has proved such debt, such costs to be recovered by application to the court, upon which an order for payment thereof may be made by the court; provided also, that such assignees or creditors may apply in the first instance to the vice-chancellor, or either party may appeal against the determination of the court of bankruptcy.

CLXXXIV. That no creditor having security for his debt, or having made any attachment in London or in any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure and sale upon or any mortgage of or lien upon any part of the property of such bankrupt before the date of the fiat or the filing of a petition for adjudication of bankruptcy: Provided always, that nothing herein contained shall be deemed to give validity to any warrant of attorney, cognovit or consent to a judge's order declared to be null and void by any provision of this act, nor to give validity to any judgment entered up under or by virtue of any such warrant of attorney or consent, or to any execution or extent executed or levied under or by virtue of any such warrant of attorney, cognovit or consent.

And with respect to the audit, be it enacted,

CLXXXV. That the court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the bankrupt, (of which public sitting and of the purport whereof ten days' notice shall be given in the London Gazette,) to audit the accounts of the assignees; and at such sitting the assignees shall deliver upon oath a true statement in writing of all money received by them respectively, and when, and on what account, and how the same has been employed; and the court shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and it shall be lawful for the court to examine the assignees upon oath touching the truth of such accounts, and to make therein all just allowances.

CLXXXVI. That the court may, as often as it shall appear expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold when it shall appear to such court expedient, and may direct the proceeds thereof to be again laid out in the purchase of exchequer bills, or to be applied for the benefit of the creditors, the making of any such purchase or sale to be subject to the rules or orders at any time in force under this act relating to the purchase, sale or transfer of exchequer bills by the accountant in bankruptcy.

Court may expunge proof of any debts which, after investigation, do not appear to be due.

[Repealed. See act of 1861, sect. 155.]

Persons requiring investigation to sign undertaking for costs.

Application may be made, in first instance, to vice-chancellor.

Creditors having security not to receive more than other creditors.

[G. O., 19th Oct. 1852, rr. 55—58; G. O., 12th Oct. 1861, rr. 17, 18; C. C. O., 1st July, 1863, r. 11.]

26. Of the Audit.

Appointment of sitting for audit.

[Repealed. See act of 1861, sect. 173; see also sects. 119, 129, 174, 179, 188.]

Court may direct money to be invested in exchequer bills.

[See G. O., 19th Oct. 1852, scheds. 6, 7.]

27.

Of the Dividend.

Method of
making divi-
dends.

[*Repealed. See
act of 1861, sects.
174, 176—179.*]

No dividend
without previous
audit.

Final dividend
within eighteen
months, except
where suit de-
pending, or estate
standing out, &c.

[*Repealed. See
act of 1861, sects.
174, 176—179.*]

Outstanding
debts, &c. may be
sold by the as-
signees after a
certain time
under the order
of the court.

Debtor and cre-
ditor account to
be furnished by
official assignees
to creditors' as-
signee, &c. before
final dividend.

[*Repealed. Act of
1861, sects. 174,
176—179.*]

No action to be
brought for divi-
dends, but the
remedy to be by
application to the
court.

And with respect to the dividend, be it enacted,

CLXXXVII. That the court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the bankrupt, when there are assets wherewith a dividend may be made, (of which public sitting and of the purport whereof twenty-one days' notice shall be given in the London Gazette,) to make a dividend of the bankrupt's estate, and shall at such sitting direct such part of the net produce of the bankrupt's estate as it may think fit to be forthwith divided amongst such creditors as have proved debts under the bankruptcy, in proportion to their respective debts, and shall make an order in writing under the hand of the commissioner for dividend accordingly, to be filed with the proceedings, which order shall contain an account of the amount of the debts proved, of the money to be divided, of how much in the pound is then ordered to be paid to the creditors, and of the money allowed by the court to be retained, and of the reason for retaining the same; and the official assignee, in pursuance of such order, shall forthwith make such dividend in manner directed by the rules at any time in force under this act relating to the mode of payment of dividends by the official assignees; but no dividend shall be declared unless the accounts of the assignees shall have been first audited.

CLXXXVIII. That if the bankrupt's estate shall not have been wholly divided upon the first dividend, the court shall, within eighteen months after the issuing of the fiat, or the filing of the petition for adjudication of bankruptcy, appoint a public sitting (whereof and of the purport whereof twenty-one days' notice shall be given in the London Gazette) to make a second dividend, when all creditors who have not proved their debts may prove the same, and at such sitting, but after such an audit as is directed by this act, shall order the balance in hand to be forthwith divided among such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees, in which case they shall, as soon as may be, convert such estate and effects into money, and within two months after the same shall be so converted the same shall also be divided in manner aforesaid; and if at the expiration of two years from the issuing of any fiat, or the filing of any petition for adjudication of bankruptcy, there shall remain any outstanding debts or other property due or belonging to the estate of the bankrupt, which cannot, in the opinion of the court, be collected and received without unreasonable or inconvenient delay, it shall be lawful for the assignees, under the direction of the court, to sell and assign such debts and other property, and also the books of the bankrupt relating to his trade, dealings or estate, in such manner and subject to such conditions as shall be ordered by the court, and any person to whom any of such debts shall be sold or assigned may sue for the same in his own name as fully as the assignees of such bankrupt might have done.

CLXXXIX. That fourteen days before a final dividend shall be advertised under the bankrupt's estate there shall be sent by the official assignee to each creditors' assignee of such estate a debtor and creditor account between the official assignee and such estate, showing also the monies remaining uncollected under such estate, and the cause of such monies remaining uncollected; and a copy of such account shall be delivered to any creditor who shall apply for the same to the official assignee, and who shall have proved or claimed a debt, and to any other person, such person, if not a creditor, paying such sum, not exceeding two shillings and sixpence, as shall be settled by the court for every such copy.

CXC. That no action for any dividend shall be brought against any assignee by any creditor who shall have proved under the bankruptcy; but if the official assignee shall refuse to pay any such dividend, the court may order payment thereof, with interest for the time that it shall have been withheld, and may also order the costs of the application.

And with respect to unclaimed dividends, be it enacted,

CXCI. That all unclaimed dividends, and also any undivided surplus of a bankrupt's estate over and above the amount finally directed to be divided amongst the creditors of any bankrupt, shall be paid into the bank of England to the credit of the accountant in bankruptcy, to be carried to the account intituled "the unclaimed dividend account," subject to the order of the lord chancellor, or of the vice-chancellor, or of any court acting in prosecution of any bankruptcy, for the payment thereof of any dividend due to any creditor.

CXCII. That, subject to any rule at any time in force under this act relating to unclaimed dividends, if any assignee under any bankruptcy shall have, either in his own hands, or at any bankers, or otherwise subject to his order or disposition, or shall know that there is or are in the hands or subject to the order and disposition of himself and co-assignee or co-assignees, or of any or either of them, any unclaimed dividend or dividends, or any such undivided surplus as aforesaid, such assignee shall, as to any such now existing unclaimed dividend or dividends, within one year after the passing of this act, and as to any future dividend or dividends within three calendar months next after the expiration of one year from the time of the declaration and order of payment of such future dividend or dividends, either pay the same to the creditor or creditors or other the person or persons entitled to the same respectively, or cause a certificate thereof respectively to be filed in the office of the lord chancellor's secretary of bankrupts, containing a full and true account of the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are respectively due, and of the amount of such dividend or dividends respectively, and shall in like manner, as to any such now existing undivided surplus as aforesaid within one year after the passing of this act, and as to any such future undivided surplus as aforesaid within three calendar months next after the expiration of one year after the final declaration of dividends, cause a certificate, stating the full and true amount of such surplus, to be filed in the office of the lord chancellor's secretary of bankrupts; and every certificate to be filed as aforesaid shall be signed by the assignee or assignees filing the same; and every assignee shall, within one year next after the filing of any such certificate as aforesaid, pay or cause to be paid into the bank of England to the name of the accountant in bankruptcy, to be carried to the account intituled "the unclaimed dividend account," the full amount of the unclaimed dividends mentioned in such certificate, or so much thereof as shall not have been then paid to the creditor or creditors or other person or persons entitled thereto, and also the full amount of such undivided surplus as aforesaid; and every official assignee shall cause a certificate to be filed of all unclaimed dividends and undivided surplus belonging to any bankrupt's estate under his care and management, in such manner and subject to such provisions as above prescribed with respect to unclaimed dividends and undivided surplus, and as if the official assignee had such dividends or undivided surplus in his own hands: Provided always, that no certificate of any unclaimed dividends shall be filed until the expiration of one year after the declaration and order for payment of such dividends.

CXCIII. That the accountant in bankruptcy shall, on the application of any assignee, give to him a certificate stating the amount of any sum of money which he may be desirous of paying into the bank of England under the provisions hereinbefore contained, and on the production of such last-mentioned certificate the governor and company of the bank of England shall receive the sum therein mentioned, and give a receipt for the same, and shall forthwith carry the same to the credit of the accountant in bankruptcy to the account intituled "the unclaimed dividend account;" and every such certificate and receipt shall be given without fee or reward.

And with respect to allowances to the bankrupt, be it enacted,

CXCIV. That it shall be lawful for the court, if it think fit, from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family: Provided always, that no such allowance shall be made by the court for any period after the adjournment of the last examination sine die.

28.
Of Unclaimed Dividends.

Unclaimed dividends, &c. to be paid into the bank to the credit of the accountant in bankruptcy, and carried to "unclaimed dividend account."

[See act of 1861, sect. 181; see post, sects. 262—264; see additional forms, 153—158.]

How unclaimed dividends, &c. in the hands of assignees to be disposed of.

[See act of 1861, sect. 184; see post, sect. 262—264.]

Bank of England to receive from assignees and give a receipt for any sum mentioned in a certificate of the accountant in bankruptcy.

[Repealed; but see act of 1861, sect. 183.]

29.
Of Allowances to the Bankrupt.

Allowance to bankrupt for maintenance.

[May be over-riden by resolution of creditors, act of 1861, sect. 109.]

Allowance to bankrupt, 5 per cent., and not exceeding 400*l.*, as soon as 10*s.* paid in the pound; 7½ per cent., and not exceeding 500*l.*, if 12*s.* 6*d.*; 10 per cent., and not exceeding 600*l.*, if 15*s.*

[*Quære, whether repealed by act of 1861, sect. 174, or whether existing still so far as not overridden by resolution under that section.*]

Allowance not payable till twelve months after the bankruptcy, and then only if requisite amount of dividends paid. If at expiration of twelve months the dividends paid be under 10*s.*, bankrupt may be allowed not exceeding 3 per cent. and 300*l.*

One partner may receive allowance, although other not entitled.

If produce of estate pay twenty shillings in the pound, and leave surplus, such surplus to be paid to bankrupt after payment of interest on debts.

30.

Of the Certificate of Conformity.

Mode of obtaining certificate of conformity.

[*Repealed; but see act of 1861, sects. 157 et seq.*]

Certificate to be under hand and seal, and to certify the bank-

CXCV. That every bankrupt who shall have obtained his certificate, if the net produce of his estate in hand shall by any order of dividend (with or without prior dividend) pay the creditors who before or at the time of making such order have proved under the bankruptcy ten shillings in the pound, shall be allowed and paid five pounds per centum out of such produce, provided such allowance shall not exceed four hundred pounds; and every such bankrupt, if such produce shall (with or without prior dividend) pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per centum, provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall (with or without prior dividend) pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid ten pounds per centum, provided such allowance shall not exceed six hundred pounds; provided always, that no such allowance shall be payable to any bankrupt until after the expiration of twelve months from the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, and such allowance shall then be payable only in the event of the dividends paid to the creditors, who at any time before the expiration of such twelve months shall have proved debts, being of the requisite amount in that behalf aforesaid; and if at the expiration of such time the dividends paid shall not amount to ten shillings in the pound, it shall be lawful for the court to allow such bankrupt so much as the assignees and court shall think fit, not exceeding three pounds per centum and three hundred pounds: Provided always, that the court shall, if it think fit, reduce any allowance in case it shall have only granted the bankrupt a certificate of the second or third class.

CXCVI. That in all joint fiats or petitions for adjudication of bankruptcy under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although the other partner may not be entitled to any allowance.

CXCVII. That if the produce of the estate of any bankrupt shall be sufficient to pay twenty shillings in the pound and interest as hereinafter mentioned, and to leave a surplus, the court may order such surplus to be paid to such bankrupt, his executors, administrators or assigns; and every such bankrupt shall be entitled to recover the remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors who have proved shall have received interest upon their debts to be calculated and paid at the rate and in the order following; viz., all creditors whose debts are by law entitled to carry interest in the event of a surplus shall first receive interest on such debts at the rate of interest reserved or by law payable or proveable thereon, to be calculated from the date of the fiat or the filing of the petition for adjudication of bankruptcy; and after such interest shall have been paid, all other creditors who have proved shall receive interest on their debts from the date of the fiat or of such petition at the rate of four pounds per centum per annum.

And with respect to the certificate of conformity, be it enacted,

CXCVIII. That forthwith after the bankrupt shall have passed his last examination, the court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof twenty-one days' notice shall be given in the London Gazette and to the solicitor of the assignees), and at such sitting the assignees, or any of the creditors of such bankrupt who shall have given to the registrar of the court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the court, having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require.

CXCIX. That the certificate of conformity under this act shall be in writing under the seal of the court and the hand of the commissioner, and shall certify that the bankrupt has made a full discovery of his estate and effects, and in all

things conformed, and that, so far as the court can judge, there does not appear any reason to question the truth or fulness of such discovery (and shall be in the form contained in the schedule Z. to this act annexed, or to the like effect); and notice of the allowance of such certificate and of the class thereof shall be advertised in the London Gazette, in such manner as may be directed by any rule or order to be made in pursuance of this act; and every certificate of conformity allowed by any commissioner before the time appointed for the commencement of this act, though not confirmed according to the laws in force before that time, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the fiat.

CC. That the certificate of conformity allowed under this act, subject to the provisions herein contained, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the bankruptcy: Provided always, that no such certificate shall release or discharge any person who was a partner with such bankrupt at the time of his bankruptcy, or was then jointly bound or had made any joint contract with such bankrupt.

CCI. That no bankrupt shall be entitled to a certificate of conformity under this act, and any such certificate, if allowed, shall be void, if such bankrupt shall have lost by any sort of gaming or wagering in one day twenty pounds, or within one year next preceding the issuing of the fiat or filing of the petition for adjudication of bankruptcy two hundred pounds, or if he shall within one year next preceding the issuing of the fiat or the filing of such petition have lost two hundred pounds by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract, or if such bankrupt shall after an act of bankruptcy, or in contemplation of bankruptcy, or with intent to defeat the object of this or any other statute relating to bankrupts, have parted with, concealed, destroyed, altered, mutilated or falsified, or caused to be concealed, destroyed, altered, mutilated or falsified, any of his books, papers, writings or securities, or made or been privy to the making of any false or fraudulent entry in any book of account or other document with intent to defraud his creditors, or shall have concealed any part of his property, or if, any person having proved a false debt under the bankruptcy, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

CCII. That any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to forbear opposing or to consent to the allowance of the bankrupt's certificate, or to forbear to petition for the recall of the same, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this act and the special matter in evidence.

CCIII. That at any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may be made in pursuance of this act be directed, any creditor of the bankrupt, or any assignee, official or other, may apply to the vice-chancellor that such certificate may be recalled and delivered up to be cancelled; and the vice-chancellor may, on good cause shown, order such certificate to be recalled and cancelled.

CCIV. That no bankrupt, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim or demand, upon any contract, promise or agreement made after the issuing of the fiat or filing of the petition for adjudication of bankruptcy; and if any bankrupt be sued upon any such contract, promise or agreement, he may plead the general issue, and give this act and the special matter in evidence.

CCV. That any bankrupt who shall, after his certificate shall have been allowed, be arrested, or have any action brought against him, for any debt, claim

rupt's conformity, &c.; no certificate allowed before the commencement of this act shall require confirmation.

[Repealed; see act of 1861, sect. 172.]

Certificate to discharge bankrupt from all debts due by him when he became bankrupt.

[Repealed. See act of 1861, sects. 161, 163.]

Bankrupt not entitled to certificate if he has lost by gaming 20*l.* in one day, or 200*l.* within twelve months, or 200*l.* by stock jobbing; or

[Repealed. See act of 1861, sect. 159; see also post, sect. 256, also repealed.]

concealed or destroyed books, &c.;

or made fraudulent entries, or concealed any property, or permitted fictitious debts to be proved.

Contract or security to induce creditor to forbear opposition, void.

[Repealed; but see act of 1861, sect. 166.]

Certificate may be recalled.

[Repealed. See act of 1861, sect. 168.]

Bankrupt not liable upon any promise to pay debt discharged by certificate.

[Repealed. See act of 1861, sect. 164.]

Bankrupt having obtained his certificate free from arrest.

[*Repealed. See act of 1861, sect. 161.*]

Certificate to be evidence of the bankruptcy and proceedings, and bankrupt in execution may be discharged.

[*See act of 1861, sects. 162, 165.*]

Certificate not to be delivered to bankrupt until after expiration of time for appeal, and if appeal duly entered, certificate to be further kept by the court to abide the judgment of the vice-chancellor.

[*Repealed. See act of 1861, sects. 170, 171.*]

Allowance of the certificate, and refusal or suspension thereof, except in case of appeal, to be final and conclusive, unless obtained fraudulently.

[*Repealed; but see act of 1861, sect. 168.*]

or demand proveable under his bankruptcy, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence; and such bankrupt's certificate shall be sufficient evidence of the trading, bankruptcy, fiat or petition for adjudication, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution or detained in prison for such debt, claim or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the court wherein judgment has been so obtained, on such bankrupt producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

CCVI. That no such certificate shall be delivered to the bankrupt until after the expiration of the time allowed for entering an appeal; and if an appeal be duly entered against the judgment of such court for the allowance of the certificate, or for the refusal, the withholding, or the class of the certificate, and notice thereof be given to the court in such manner as may by any general rule or order to be made in pursuance of this act be directed, the certificate shall be further kept by the court, and abide the judgment of the vice-chancellor thereupon; and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the court as to any offence under this act charged against the bankrupt, the vice-chancellor shall have power to rescind or vary the order of the court below, or to make such other order thereon as he may think fit; and upon an order for the allowance of any certificate by the vice-chancellor, and whether with conditions or not, or after a suspension thereof, by order of the vice-chancellor or not, such certificate may be allowed and signed by the court below, or by the vice-chancellor.

CCVII. That the allowance of the certificate by the court, and any order for the refusal or suspension of the allowance thereof, except in case of appeal, shall be final and conclusive, and shall not be reviewed by the court, unless the court shall thereafter see good and sufficient cause to believe that the allowance of such certificate, or the refusal or suspension thereof, has been obtained on false evidence or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained, in any of which cases it shall and may be lawful for the court, upon the application of the bankrupt, or of any creditor of the bankrupt, and subject to such order as to deposit of a sum for costs, and to such notices to the bankrupt and to creditors, by advertisement or otherwise, as the court shall think fit, to grant a re-hearing of the matter, and to re-hear the same accordingly; and upon such re-hearing the court shall make such order as to the allowance of the certificate, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, so far as the case will admit, as upon an original hearing; and in case the certificate shall have been previously allowed, and upon such re-hearing the allowance thereof shall not be confirmed, such certificate shall have no force or effect whatever, and the same shall be delivered up to the court and cancelled.

31.

Of Estates Tail.

Clauses in 3 & 4 Will. 4, c. 74, with respect to the disposition of estates tail under bankruptcies, extended to proceedings under petition for adjudication.

[*See post.*]

And with respect to estates tail and base fees, be it enacted,

CCVIII. That such of the clauses of an act passed in the fourth year of the reign of king William the fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," as are numbered respectively in the copies of that act printed by her majesty's printers, lvi, lvii, lviii, lix, lx, lxi, lxii, lxiii, lxiv, lxv, lxvi, lxvii, lxviii, lxix, lxxi, lxxii, lxxiii, shall extend and apply to proceedings in bankruptcy under a petition for adjudication of bankruptcy, as fully and effectually as if those clauses were re-enacted in this act, and expressly extended to such proceedings.

32.

Of Copyholds.

Court may make sale of copyhold lands, for the benefit of creditors.

And with respect to copyholds, be it enacted,

CCIX. That the court shall have power to sell, and by deed indented, and inrolled in the courts of the manor or manors whereof the lands respectively may be holden, to convey, for the benefit of the creditors, any copyhold or customaryhold lands, or any interest to which any bankrupt is entitled therein,

and thereby to entitle or authorize any person or persons on behalf of the court of bankruptcy to surrender the same, for the purpose of any purchaser being admitted thereto. [Repealed; but see act of 1861, sect. 114.]

CCX. That every person to whom any such conveyance of copyhold or customary lands or tenements, or of any such interest therein, shall be made, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden for such fines, dues and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements, for such estate or interest as shall have been so conveyed to him as aforesaid, reserving the ancient rents, customs and services, and shall admit him tenant of the same. Vendees of copyhold lands shall compound with the lord for their fines.

And with respect to arrangements between debtors and their creditors under the superintendence and control of the court, be it enacted,

CCXI. That any such trader unable to meet his engagements with his creditors, and desirous of laying the state of his affairs before them, under the superintendence and control of the court of bankruptcy, and of submitting himself to the jurisdiction of the court, in manner hereinafter mentioned, may present a petition to the court, setting forth the true cause of such inability, and praying that his person and property may be protected from all process until further order; and the court, on such petition, shall have power to grant such protection, and may renew the same from time to time as it shall think fit, and, if the petitioner be in prison or in custody for debt, may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or on condition, and may take bail for his attendance at the several sittings of the court hereinafter mentioned: Provided always, that the court shall not order such release where it shall appear by any judgment, order, commitment or sentence under which such petitioner is in prison or in custody, or by the record or entry of any such judgment, order, commitment or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy: Provided also, that such release shall in nowise affect any rights of the creditor at whose suit such petitioner may be in prison or in custody against such petitioner, except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the court. 33.
Of Arrangements under the Control of the Court.
Any trader unable to meet his engagements with his creditors may petition the court for protection.
[Repealed by act of 1861.]

CCXII. That every such petition shall be in the form contained in the schedule A a. to this act annexed, and be filed and prosecuted in the court within the district of which the petitioner shall have resided or carried on business for six months next immediately preceding the time of filing such petition, unless the senior commissioner shall order the same to be filed and prosecuted or further prosecuted in any other district, and which order he shall have power to make, and the date of filing every such petition shall be indorsed thereon, and there shall be filed therewith an affidavit in the form contained in the schedule A b. to this act annexed. Petition to be supported by affidavit.
[Repealed by act of 1861.]

CCXIII. That forthwith after the granting of any order for protection the court shall appoint a private sitting to be held at such time and place as it may name, and shall at the same time appoint an official assignee to act in the matter of such petition, and upon sufficient cause shown may, if it shall think fit, direct that the estate and effects of the petitioner, or any part thereof, shall be possessed and received by such official assignee, or be taken possession of by the messenger of the court; and all stock, monies and other effects of the petitioner shall be transferred, delivered and paid by the official assignee into the bank of England, to the credit of the accountant in bankruptcy, to be subject to the Court to appoint private sitting and official assignee, &c.
[Repealed by act of 1861.]

like rule and regulation for the keeping the account of the said monies and other effects, and for the payment and delivery in, investment, and payment and delivery out of the same, as in bankruptcy, and the court shall have power to examine on oath such petitioner, or any witness produced by him, or any creditor or person claiming to be a creditor of such petitioner, and to adjourn such private sitting or any subsequent private sitting, from time to time as it shall think fit; and notice of such private sitting shall be given in writing to every creditor not less than fourteen days before the same is held, such notice to be sent by post addressed to every creditor at his last known place of business or residence.

Petitioning debtor to file account ten days before the day appointed for private sitting, and furnish official assignee with a copy.

[*Repealed by act of 1861.*]

At first sitting creditors to prove their debts, and if three fifths in number and value of those who have proved debts to the amount of 10*l.* and upwards assent to proposal, sitting for confirmation to be appointed.

[*Repealed by act of 1861.*]

If at second sitting three fifths in number and value of the creditors who have proved debts to the amount of 10*l.* and upwards agree to accept, resolution to be binding on all; and court, if it think the proposal reasonable and proper to be executed, to approve and confirm the same.

[*Repealed by act of 1861.*]

CCXIV. That such petitioning trader shall, ten days before the day appointed for the private sitting of the court, file in court, and in such form as may by any rule or order to be made in pursuance of this act be directed, a full account of his debts, and the consideration thereof, and the names, residences and occupations of his creditors, and also a full account of his estate and effects, whether in possession, reversion or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever, held in trust for him, and shall therein set forth such proposal as he is able to make for the future payment or the compromise of such debts or engagements, and shall furnish the official assignee with a copy of such account.

CCXV. That at the private sitting of the court appointed in manner hereinbefore mentioned, or at any adjournment thereof, the creditors shall prove their debts, (such proofs to be in all respects as proofs in bankruptcy,) and the petitioning trader shall attend, and make oath of the truth of the account filed by him, and may be examined thereon; and if at such sitting, or at any adjournment thereof, three fifths in number and value of the creditors who have proved debts to the amount of ten pounds shall assent to the proposal of such petitioner, or to any modification thereof, the court shall appoint another private sitting for the confirmation of such proposal or modified proposal, and such second sitting shall be held not earlier than fourteen days from the first sitting, and notice thereof in writing shall be personally served on every creditor who was not present by himself or his appointed agent at such first sitting seven clear days at least before the day appointed for such second sitting: Provided always, that the court, if it shall think fit, may make order in any special case that service of such notice at the last known place of abode or business of any creditor shall be deemed good service.

CCXVI. That at such second sitting, or at any adjournment thereof, the creditors may also prove their debts, and if three fifths in number and value of those who have proved debts to the amount of ten pounds shall agree to accept such proposal as was assented to at the first sitting, the terms thereof shall be reduced into writing, and the creditors shall sign the same; and such resolution of agreement (subject to such confirmation as is hereinafter mentioned) shall thenceforth be binding and of full force, as well against such petitioning trader as against all persons who were creditors at the date of his petition, and who had notice of the said several sittings of the court; and the court, if it shall think the same reasonable and proper to be executed, after hearing such creditors, by themselves, their counsel or attornies, as may desire to be heard either for or against such resolution or agreement, shall approve and confirm the same, and cause it to be filed and entered of record, and shall grant to the petitioner a certificate of the filing and entering of record of such approval and confirmation, and shall from time to time endorse on such certificate a protection from arrest; and such petitioner shall be free from arrest at the suit of any person being a creditor at the date of his petition, and having had such several notice or notices as aforesaid; and any officer arresting such petitioner at the suit of any such creditor, and on sight of such certificate and protection not releasing such petitioner, shall be liable to such penalty as is provided respecting bankrupts in the like case; provided, however, that no such protection shall be valid in favour of any such petitioner who shall be proved to have been about to abscond beyond the jurisdiction of the court, or who has concealed or is concealing any part of his estate or effects, nor against any creditor whose debt is not truly specified in the account filed by such petitioner, nor against any creditor whose

debt has been contracted by such petitioner by any manner of fraud or breach of trust.

CCXVII. That any person duly authorized by letter of attorney from any creditor who has proved a debt to the amount of ten pounds and upwards shall be entitled to vote on the question of assent or dissent to the proposal of such petitioning trader.

Person authorized by letter of attorney may vote.

[Repealed by act of 1861.]

CCXVIII. That from and after the date of the approval and confirmation of such resolution or agreement all the estate and effects of such petitioning trader shall vest in the official assignee (if such shall be required by virtue of such resolution, and either alone or jointly with any person or persons, as may be expressed in such resolution), as fully as if such official assignee were an assignee under any bankruptcy; and every such official assignee may sue and be sued as if he were such assignee; and in the event of the death, resignation or removal of any such official assignee, the court shall have power to appoint another; and if the estate and effects shall have vested in such official assignee, the same shall vest in the new official assignee so appointed in the same manner as in bankruptcy.

Estate to vest in official assignee, and either alone or (if required by resolution) jointly with any other person.

[Repealed by act of 1861.]

CCXIX. That the official assignee shall once at least in every six months, or oftener if the court shall require it, produce to the court, on oath, a full and true account of all monies, property and effects of such petitioning trader which have come to his hands, and of the disposal thereof; and the court shall examine the same, and shall certify the result of such examination, and, if need be, order payment to the creditors of such petitioner, according to the terms of the resolution or agreement, and may in such account make all just allowances, and may order payment to the official assignee of such sum as a remuneration for his services as shall appear to be just and reasonable.

Official assignee to file account every six months.

[Repealed by act of 1861.]

CCXX. That in case any difficulty shall arise in the execution of the said resolution or agreement it shall be lawful for the court to cause a special sitting of the court to be held; and the resolution of the majority of the creditors at such sitting who have proved debts to the amount of ten pounds, to confirm, alter or annul the whole or any part of such resolution or agreement, shall be as valid as if it had been part of the original resolution or agreement: Provided, however, that if one third in number and value of the creditors of such petitioning trader do not attend such sitting, the resolution thereof shall not be valid unless the same is approved and confirmed by the court.

If any difficulty arise in the execution of resolution, &c., a special sitting may be held.

[Repealed by act of 1861.]

CCXXI. That so soon as the said resolution or agreement shall have been carried into effect, and the creditors of such petitioning trader shall have been satisfied according to the tenor thereof, the court shall give to such petitioner a certificate under the hand and seal of the commissioner in the form contained in the schedule A c. to this act annexed, setting forth the filing of the petition, the resolution or agreement of the creditors, and that the said resolution or agreement has been fully carried into effect; and such certificate shall thenceforth operate to all intents and purposes as fully as if the same were a certificate of conformity under a bankruptcy, except only that any debt which shall have been contracted wholly or in part by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy, shall not be barred by such certificate.

When resolution or agreement has been carried into effect, court to give petitioning debtor a certificate thereof, and such certificate to operate as a certificate of conformity.

[Repealed by act of 1861.]

CCXXII. That the court, on being satisfied that the official assignee has fully performed his trust, shall give to him a certificate thereof in the form contained in the schedule A d. to this act annexed; and such certificate shall be a full release and acquittance to such official assignee, both in law and equity, for all matters done by him as such official assignee.

Court on being satisfied that official assignee has fully performed his trust, to give him a certificate thereof.

[Repealed by act of 1861.]

CCXXIII. That if such petitioning trader shall not duly attend the sittings of the court, or if he shall not file his account in manner aforesaid, within such extended time as may be allowed him by the court for such purpose, or if he shall fail to obey any order of the court which may be made in the matter of

If petitioning debtor do not attend sittings of the court, or if he do not file ac-

count, &c., petition to be dismissed, and if at first sitting proposal be not assented to, or if debts contracted by fraud, &c., or if petitioning debtor has not made true discovery, &c., court may adjudge him bankrupt, and adjourn the proceedings into the public court, &c.

[*Repealed by act of 1861.*]

his petition, such petition shall be dismissed; and if at the first private sitting of the court, or at any adjournment thereof, the proposal of the petitioner, or some modification thereof, be not assented to, or if at any time after the filing of any petition for protection it shall be shown to the satisfaction of the court, by any creditor, that the debts of such petitioner, or any part thereof, have been contracted by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication of bankruptcy, or if it shall be shown that the affidavit filed with his petition was wilfully untrue, so far as concerned the assets ready to be produced by him, or that he has not made a full disclosure of his debts and credits, estate and effects, and is not desirous of making a bonâ fide arrangement with all his creditors, or that his proposal to that effect is not reasonable and proper to be executed under the direction of the court, or that he has postponed the presentation of his petition longer than was excusable, or if within three months of the time of presenting his petition he shall have assigned, transferred or made away with any portion of his estate or effects otherwise than in due course, or shall have voluntarily done or suffered any act whereby his goods shall have been taken in execution, it shall be lawful for the court to adjudge such petitioner a bankrupt, and to adjourn all further proceedings in the matter in the public court, and to advertise such adjudication, and appoint sittings for choice of assignees and for last examination, as in bankruptcy; and such petitioner shall thenceforth be amenable to the jurisdiction of the court in the same manner as any other bankrupt, and any proposal which may have been made or assented to or confirmed shall be wholly and altogether void; and the court shall have power, at any time on the application of any creditor, to appoint a private sitting for the purpose of such inquiry, and may summon before it such petitioning trader, or any other person, and examine him upon oath touching such matters; and every such summons and examination shall be enforced in such manner as summonses and examinations are enforced in matters of bankruptcy.

34.
*Of Arrangements
by Deed.*

Deed of arrangement entered into between any debtor and his creditors, and executed by six sevenths in number and value of the creditors whose debts amount to 10*l.* and upwards, to be binding on all.

[*Repealed; but see act of 1861, sects. 192—200.*]

Deed not to be effectual upon creditor who has not signed until after expiration of three months from notice of suspension and of proposed deed, &c., unless court shall otherwise order.

[*Repealed; but see act of 1861, sects. 192—200.*]

And with respect to arrangements by deed, be it enacted,

CCXXIV. That every deed or memorandum of arrangement now or hereafter entered into between any such trader and his creditors, and signed by or on behalf of six sevenths in number and value of those creditors whose debts amount to ten pounds and upwards, touching such trader's liabilities, and his release therefrom, and the distribution, inspection, conduct, management and mode of winding-up of his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same; and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of bankruptcy: Provided always, that every creditor shall be accounted a creditor in value in respect of such amount only as, upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such trader, shall appear to be the balance due to him.

CCXXV. That no such deed or memorandum of arrangement shall be effectual or obligatory upon any creditor who shall not have signed the same, until after the expiration of three months from the time at which such creditor shall have had notice from such trader of his suspension of payment, and of such deed or memorandum of arrangement, unless such trader shall within such time obtain from the court an order or certificate of the said court declaring or certifying that such deed or memorandum of arrangement has been duly signed by or on behalf of such majority of the creditors as aforesaid; and it shall be lawful for the court within the district of which the trader shall have resided or carried on business for six months next immediately preceding his suspension of payment

to make such order or certificate on the petition of any such trader, and to exercise jurisdiction in and over the matters of any such application; and no creditor who shall not have had fourteen days' notice of any intended application for such order or certificate as aforesaid shall be bound thereby.

CCXXVI. That when the trustee or inspector under any such deed or memorandum of arrangement, or, if there shall be no such trustee or inspector, when any two of the creditors, shall be satisfied that six sevenths in number and value of the creditors whose debts amount to ten pounds and upwards have signed such deed or memorandum, it shall be lawful for such trustee or inspector, or for such two creditors, as the case may be, to certify the same to the court in writing, and such certificate shall be filed with the registrar of the court, and shall thereupon be *prima facie* evidence in all courts of law and equity that such deed or memorandum of arrangement has been so signed.

Trustee or inspector, &c. to certify as to proper number of creditors having signed, which certificate shall be filed, &c.

[*Repealed; but see act of 1861, sects. 192—200.*]

CCXXVII. That every such certificate as last aforesaid shall have appended thereto a full account of the debts of such trader, together with the names, residences and occupations of his creditors, and shall be accompanied by an affidavit by such trader verifying the same; and any omission in such account or the insertion therein of any debt not really existing, or of any larger amount of debt than that really existing, and which shall appear to the court to have been made through the culpable negligence or fraud of such trader, with intent to defraud any of his creditors, shall deprive him of the benefit of the provisions of this act with respect to arrangements by deed, and of the discharge proposed in any such deed or memorandum of arrangement: Provided always, that any omission, insertion or incorrectness in such account, which shall not have been made through such culpable negligence or fraud as aforesaid, shall not defeat or otherwise affect such deed or memorandum of arrangement.

Account of debts, &c. to be annexed to such certificate, and to be verified by affidavit of arranging debtor.

[*Repealed; but see act of 1861, sects. 192—200.*]

CCXXVIII. That the creditors of every such trader shall have the same rights respectively as to set-off, mutual credit, lien and priority, and joint and separate assets shall be distributed, in like manner as in bankruptcy; and no creditor shall be prejudiced or affected by being a party to any such deed or memorandum of arrangement as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such trader; and every person who would be entitled to prove in bankruptcy shall be deemed a creditor within the meaning of the provisions of this act with respect to arrangements by deed.

Creditors to have the same rights as in bankruptcy, and not to be prejudiced with respect to their rights against third persons.

[*Repealed; but see act of 1861, sects. 192—200, especially sect. 197.*]

CCXXIX. That if any creditor of any trader shall be desirous to show that the administration of the estate of such trader has not been duly conducted in conformity with such deed or memorandum or arrangement, it shall be lawful for him to apply to the court by petition, supported by affidavit, stating any facts or circumstances to show that such administration has not been duly conducted, and thereupon the court shall have full power and it is hereby fully authorized to consider the subject-matter of such application, and if it shall think fit may direct any inquiry, and in such manner as it shall think proper, into the subject of such application, and generally may make such order and exercise such jurisdiction in or over the subject-matter of such application and the costs thereof as to the said court shall appear just.

In case of improper administration any creditor may apply to the court.

[*Repealed; but see act of 1861, sects. 192—200, especially sect. 197; see also sect. 136.*]

And with respect to composition after adjudication of bankruptcy, be it enacted,

35.

Composition after Bankruptcy.

CCXXX. That any bankrupt, at any time after he shall have passed his last examination, may call a meeting of his creditors (whereof, and of the purport whereof, twenty-one days' notice shall be given in the London Gazette), and if the bankrupt or his friends shall make an offer of composition, and nine tenths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid, and if at such second meeting nine tenths in number and value of the creditors then present shall also agree to accept such offer, the court shall and may, upon such acceptance being testified by them in writing, and upon payment of such sum as the court shall direct, annul the adjudication of bankruptcy, and supersede or dismiss the fiat or petition for adjudication, and every creditor of such bankrupt shall be bound to accept of such composition so agreed to.

If after adjudication nine tenths in number and value of creditors accept composition, the same shall bind the rest.

[*Repealed. See act of 1861, sects. 185—191; see also same act, sects. 110—136.*]

Mode of voting in deciding upon such composition.

[*Repealed. See margin, ante, sect. 230.*]

36.
Of Evidence.

Officer of court to produce proceedings and give copies thereof.

[*G. O., 19th Oct. 1852, r. 46.*]

[*C. C. O., 1st July, 1863, r. 7.*]

If bankrupt do not dispute the fiat or petition, the Gazette to be conclusive evidence of the bankruptcy as against the bankrupt and against persons whom the bankrupt might have sued had he not been adjudged bankrupt.

In certain actions by or against any person acting under the bankruptcy no proof required at the trial of petitioning creditor's debt, trading or act of bankruptcy, un-

CCXXXI. That in deciding upon the offer of composition no creditor whose debt is below twenty pounds shall be reckoned in number, but the debt due to such creditor shall be computed in value; and every creditor to the amount of fifty pounds and upwards residing out of England shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner required for a creditor's voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if thereto required) make oath before the court that there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent.

And with respect to evidence, be it enacted,

CCXXXII. That the proper officer of the court in London and in the several districts in the country shall, on the reasonable request of any bankrupt or arranging debtor, or of any creditor of such bankrupt having proved his debt, or of an arranging debtor, when the debt of the arranging creditor has been admitted in the petition or proved, or on the like request of the attorney of any such bankrupt, debtor or creditor, produce and show to such bankrupt, debtor, creditor or attorney, at such times as the court shall direct, every fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, and petition for arrangement, against or by such bankrupt, and all orders and proceedings (a) under any such fiat, petition or adjudication, and the court shall order the official assignee or officer of the court, as the case may be, to permit such bankrupt, debtor, creditor or attorney to have inspection at all reasonable times of all books, papers and writings relating to the matters of such fiat, petition or adjudication, and the estate of the bankrupt or debtor in the possession of the assignees, or filed in court in such matter, and permit him to inspect and examine the same; and such official assignee or such officer shall provide for any such bankrupt, debtor, creditor or attorney requiring the same an office copy of such fiat, petition or other proceeding, books, papers and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum or rate of charge as may be authorized in that behalf.

(a) See act of 1861, sect. 142.

CCXXXIII. That if the bankrupt shall not (if he were within the united kingdom at the date of the adjudication) within twenty-one days (a) after the advertisement of the bankruptcy in the London Gazette, or (if he were in any other part of Europe at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action, suit or other proceeding to dispute or annul the fiat, or the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged bankrupt, that such person so adjudged bankrupt became a bankrupt before the date and suing forth of such fiat, or before the date and filing of the petition for adjudication, and that such fiat was sued forth, or such petition filed, on the day on which the same is stated in the Gazette to bear date.

(a) Altered, 17 & 18 Vict. c. 119, s. 24, to two calendar months.

CCXXXIV. That in any action, other than an action brought by the assignees for any debt or demand for which the bankrupt might have sustained an action had he not been adjudged bankrupt, and whether at the suit of or against the assignees, or against any person acting under the warrant of the court, for anything done under such warrant, no proof shall be required, at the trial, of the petitioning creditor's debt, or of the trading or act of bankruptcy respectively, unless the other party in such action shall, if defendant at or before

pleading, and if plaintiff before issue joined, give notice in writing to such assignees or other person that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignees or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignees or other person shall be entitled to the costs occasioned by such notice; and such costs shall, if such assignees or other person shall obtain a verdict, be added to the costs, and if the other party shall obtain a verdict shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignees or other person.

less notice be given that those matters are to be disputed.

CCXXXV. That in all suits in equity, other than a suit brought by the assignees for any debt or demand for which the bankrupt might have sustained a suit in equity had he not been adjudged bankrupt, and whether at the suit of or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt, or of the trading or act of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall within ten days after rejoinder give notice in writing to the assignees of their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice shall, if the court see fit, be paid by the parties so giving such notice, and the service of such notice may be proved by affidavit upon the hearing of the cause.

The same in suits in equity.

CCXXXVI. That any fiat, petition for adjudication of bankruptcy, adjudication of bankruptcy, petition for arrangement between a debtor and his creditors, assignment, appointment of assignees, certificate, deposition or other proceeding or order in bankruptcy, or under any such petition for arrangement, appearing to be sealed with the seal of the court, or any writing purporting to be a copy of any such document, and purporting to be so sealed, shall at all times, and on behalf of all persons, and whether for the purposes of this act or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of the court, without any further proof thereof, and no such document or copy shall be receivable in evidence unless the same appear to be so sealed, except where otherwise in this act specially provided: Provided always, that all fiats and proceedings under the same which may have been entered of record before the passing of the act passed in the parliament holden in the second and third years of the reign of his late majesty king William the fourth, intituled "An Act to amend the Laws relating to Bankrupts," or purporting to have been sealed before the commencement of this act with the seal of the court of bankruptcy theretofore in use, or a writing purporting to be a copy of any such document, and purporting to have been so sealed, shall and may upon the production thereof, and in the case of any fiat or proceedings entered of record before the passing of the last-mentioned act, with the certificate thereon, purporting to be signed by the person duly authorized to enter proceedings in bankruptcy, or by his deputy, be received as evidence of the same, and of the same having been duly entered of record and of such proceedings having respectively taken place, anything hereinbefore contained notwithstanding.

Proceedings purporting to be sealed with the seal of the court receivable in evidence.

[See act of 1861, sect. 203.]

2 & 3 Will. 4, c. 114.

CCXXXVII. That all courts, judges, justices and persons judicially acting, and other officers, shall take judicial notice of the signature of any commissioner or registrar of the court, and of the seal of the court, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this act.

Judicial notice to be taken of signature of commissioner or registrar, and of the seal of the court. [Repealed; but see act of 1861, s. 204.]

CCXXXVIII. That a copy of a declaration of insolvency under this act, purporting to be certified by the lord chancellor's secretary of bankrupts (a) or any of his clerks as a true copy, shall be received as evidence of such declaration having been filed.

Evidence of declaration of insolvency. [See act of 1861, sect. 72.]

(a) Now the chief registrar in London, or the registrar of the district court, if not in London, 15 & 16 Vict. c. 77, s. 6; 17 & 18 Vict. c. 119, s. 19.

Copy of petition, &c. under Insolvent Debtors Act in England or in India, &c. to be admitted as evidence.

[*Repealed; but see act of 1861, sect. 206.*]

Advertisements, when evidence.

Provisions in 6 & 7 Vict. c. 85, to be applicable to any matter in prosecution under this act.

On death of witness, office deposition or copy thereof to be evidence.

Before whom affidavits are to be sworn.
[*Repealed; but see act of 1861, sects. 207, 208; as to filing, see G.O., 19th Oct. 1852, rr. 23-25.*]

Affidavits may be sworn in prison before visiting justice or keeper of prison.
[*Repealed; but see act of 1861, s. 210.*]

Evidence may be taken *vivâ voce* or upon affidavit.

Bankrupt and bankrupt's wife to be examined upon declaration.
[*Repealed; but see ante, ss. 117, 118; post, s. 260; and act of 1861, s. 211.*]

37.

Of Solicitors.

Every solicitor of the high court of

CCXXXIX. That a copy of any petition filed in the court for the relief of insolvent debtors in England, or in any court for relief of insolvent debtors at Calcutta, Madras or Bombay, or at the settlement of Prince of Wales Island, Singapore and Malacca, and of any vesting order, schedule, order of adjudication and other orders and proceedings, purporting to be signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, vesting order, schedule, order of adjudication, or other order or proceedings, and appearing to be sealed with the seal of such court, shall at all times be admitted under this act as sufficient evidence of the same, and of such proceedings respectively having taken place, without any other proof whatever given of the same.

CCXL. That a copy of the London Gazette and of any newspaper containing any such advertisement as is by this act directed or authorized to be made therein respectively shall be evidence of any matter therein contained, and of which notice is by this act directed or authorized to be given by such advertisement; and all proceedings or notices required by this act to be inserted in the London Gazette shall be marked with the seal of the court from which such proceedings or notices shall be issued and certified by one of the registrars of the said court.

CCXLI. That the provisions of an act passed in the parliament holden in the sixth and seventh years of the reign of her present majesty, intituled "An Act for improving the Law of Evidence," shall be applicable to any matter or proceeding in prosecution under the provisions of this act, and to any matter, question or inquiry arising in any court of law or equity out of or consequent upon any such matter or proceeding.

CCXLII. That in the event of the death of any witness deposing to the petitioning creditor's debt, trading or act of bankruptcy, under any bankruptcy heretofore or hereafter, or under any petition for arrangement, the deposition of any such deceased witness, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall in all cases be received as evidence of the matters therein respectively contained.

CCXLIII. That all affidavits to be made or used in matters of bankruptcy, or in any matter or proceeding whatever under this act, shall and may be sworn before the court, or any commissioner, registrar or master thereof, or before a master in ordinary or extraordinary of the high court of chancery, or before any clerk of affidavits, assistant clerk or second assistant clerk of affidavits of the high court of chancery, or in Scotland or Ireland before such master extraordinary aforesaid, or before a magistrate of the county, city, town or place where any such affidavit shall be sworn, or elsewhere before a magistrate and attested by a notary, or before a British minister, consul or vice-consul.

CCXLIV. That any affidavit of any prisoner in any of her majesty's prisons or gaols in England, to be used in any matter under this act, may be sworn before the visiting or other justice, or if within twelve hours none such shall attend, then before the principal keeper or gaoler of such prisons or gaols, and every such keeper or gaoler is hereby authorized and required to administer the oath upon any such affidavit.

CCXLV. That the lord chancellor or the vice-chancellor, or the court of bankruptcy or any commissioner thereof, may, in all matters within their respective jurisdictions, take the whole or any part of the evidence either *vivâ voce* on oath, or by interrogatories in writing, or upon affidavit (a).

(a) *Repealed; but see act of 1861, s. 50; see also as to shorthand writers, ss. 61, 62.*

CCXLVI. That all persons who are now or shall hereafter be declared bankrupts under any fiat or petition for adjudication of bankruptcy, and the wives of such persons respectively, shall and may be examined before the court, after making and signing the declaration contained in the schedule to this act annexed, without being sworn on oath.

CCXLVII. And with respect to solicitors, be it enacted, That every solicitor of the high court of chancery heretofore or hereafter duly admitted as a solicitor of the court of bankruptcy in manner directed by the statute passed in the par-

liament holden in the sixth and seventh years of the reign of her present majesty, intituled "An Act for consolidating and amending several of the Laws relating to Attornies and Solicitors practising in England and Wales," and, subject to the provisions of the same act, may appear and plead in any proceedings in the court, without being required to employ counsel; and in case any person, not being such solicitor, shall practise in the court as a solicitor, he shall be deemed guilty of a contempt of court, and be liable to all the penalties incident thereto.

And with respect to costs, be it enacted,

CCXLVIII. That the provisions in an act passed in the session of parliament holden in the first and second years of the reign of her majesty, and intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England," so far as the same relate to orders of the lord chancellor, or of the court of review therein referred to, in matters of bankruptcy, and the powers given by the same act to the lord chancellor and the said court of review in matters of bankruptcy, shall extend to and be applicable to orders of the lord chancellor and of the vice-chancellor in matters of bankruptcy under this act.

CCXLIX. That the court may in all matters before it award such costs as to such court shall seem fit and just; and in all cases in which costs shall be so awarded against any person it shall and may be lawful for such court to cause such costs to be recovered from such person in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered, and that the like remedies may be had upon an order of such court for costs as upon a rule of any of the said superior courts for costs.

CCL. That every person summoned to attend before the court as a person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, shall have such costs and charges as the court in its discretion shall think fit; and every witness summoned to attend before the court shall have his necessary expenses tendered to him in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

And with respect to offences against the law relating to bankruptcy and other matters in this act, be it enacted,

CCLI. That if any person adjudged bankrupt shall not upon the day limited for his surrender, and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be served upon him personally or left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the London Gazette of the issuing of the fiat, or filing of the petition for adjudication of bankruptcy against him, as the case may be, and of the sittings of the court (having no lawful impediment proved to the satisfaction of the court at such time, and allowed by the court by a memorandum thereof then made on the proceedings), surrender himself to such court, and sign or subscribe such surrender, and submit to be examined before such court from time to time; or if any such bankrupt, upon such examination, shall not discover all his real and personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned or transferred any of such estate (and all books, papers and writings relating thereunto, except such part as shall have been really and bona fide before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family); or if any such bankrupt, upon such examination, shall not deliver up to such court all such part of such estate, and all books, papers and writings relating thereunto, as shall be in his possession, custody or power (except the necessary wearing apparel of himself, his wife and children); or if any such bankrupt shall remove, conceal or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors; every such bankrupt shall be deemed guilty of

chancery duly admitted as a solicitor in the court of bankruptcy may practise in the court.

6 & 7 Vict. c. 73. [Repealed; but see act of 1861, s. 212; G. O., 19th Oct. 1852, rr. 27, 35—38; C. C. O., 1st July, 1863, 68—70.]

38.

Of Costs.

The provisions and powers given to lord chancellor, &c. in bankruptcy under 1 & 2 Vict. c. 110, to be applicable to this act. [See also act of 1861, sect. 214.]

Court may in all cases award costs, which may be recovered as if they were awarded by rule of a superior court at Westminster.

[Repealed; but see act of 1861, sect. 213; G. O., 19th Oct. 1852, rr. 100, 113; and see sched. to rr. 106—113, for forms.]

Witnesses and persons known or suspected to have bankrupt's property, &c. entitled to costs of attendance, &c.

39.

Of Offences against the Law of Bankruptcy, &c.

Bankrupt not surrendering or not delivering up books, &c. or removing, concealing or embezzling estate.

[Repealed; but see act of 1861, sect. 221, clause 1.]

[Ib., clause 2.]

[Ib., clause 6.]

[Ib., clause 3.]

felony, and be liable to transportation for life, or for such term not less than seven years as the court before which he shall be convicted shall adjudge, or shall be liable to imprisonment, with or without hard labour, for any term not exceeding seven years.

Bankrupt destroying or falsifying books, &c.
[*Repealed; but see act of 1861, sect. 221, clause 7.*]

CCLII. That if any bankrupt shall, after an act of bankruptcy committed or in contemplation of bankruptcy, or with intent to defeat the object of the law relating to bankrupts, destroy, alter, mutilate or falsify any of his books, papers, writings or securities, or make or be privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of a misdemeanor, and on conviction be liable to imprisonment for any term not exceeding three years, with or without hard labour.

Bankrupt, within three months preceding his bankruptcy, obtaining goods on credit under false pretence of dealing in the ordinary course of trade.
[*Repealed; but see act of 1861, sect. 221, clause 10.*]

CCLIII. That if any bankrupt shall, within three months next preceding the date of the fiat or the filing of the petition for adjudication of bankruptcy, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any other person any goods or chattels with intent to defraud the owner thereof, or if any bankrupt shall within such time and with such intent remove, conceal or dispose of any goods or chattels so obtained, knowing them to have been so obtained, every such bankrupt shall be deemed guilty of a misdemeanor, and on conviction be liable to imprisonment for any term not exceeding two years, with or without hard labour.

False evidence.
[*See also act of 1861, sects. 54, 145.*]

CCLIV. That any bankrupt or bankrupt's wife who shall, upon any examination upon affirmation, or after making and signing the declaration authorized or directed by this or any other act relating to bankrupts, and any person who shall upon any examination upon oath or affirmation, or in any affidavit or deposition or solemn affirmation, so authorized or directed, or in any affidavit or deposition or solemn affirmation, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury.

Court may direct prosecution.
[*Repealed; but see act of 1861, sects. 159, 222.*]

CCLV. That if any bankrupt shall be suspected of or charged with the commission of any of the offences hereinbefore specified, the court may direct the assignees to institute and carry on a prosecution of such bankrupt for such offence, and to order that the costs and expenses to be incurred in such prosecution shall be paid out of his estate and effects, or if there be no such estate and effects, then out of the monies standing in the bank of England to the credit of the account intituled "the chief registrar's account," and such assignees shall thereupon institute and carry on such prosecution accordingly; and in case the said assignees shall refuse or neglect to institute and carry on such prosecution, no reasonable impediment being made known to and allowed by the court, the court may order the same to be instituted and carried on either by the official assignee alone, or by the creditors making such request, as the court may think fit.

If at sitting for last examination it appear that bankrupt has been guilty of certain offences, further protection to be refused; and if at sitting for allowance of certificate it appear that he has been guilty of any of such offences, court to refuse or suspend certificate, and to refuse further protection.
[*Repealed; see act of 1861, sect. 159.*]
[*See act of 1861, sect. 221, clause 7.*]

CCLVI. That if at the sitting appointed for the last examination of any bankrupt, or at any adjournment thereof, it shall appear to the court that the bankrupt has committed any of the offences hereinafter enumerated, the court shall refuse to grant the bankrupt any further protection from arrest; and if at any sitting or adjourned sitting for the allowance of the certificate of any bankrupt it shall appear that he has committed any of such offences, the court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the bankrupt any further protection.

Offences referred to:

First.—If the bankrupt shall at any time after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, or within two months next preceding the issuing of such fiat or the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the law of bankruptcy, have destroyed any book, paper, deed, writing or other document relating to his trade, dealings or estate:

Second.—If the bankrupt shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified, any book, paper, deed, writing or other document relating to his trade, dealings or estate: [See act of 1861, sect. 221, clause 7.]

Third.—If the bankrupt shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors: [See act of 1861, sect. 221, clause 10; sect. 159, clause 3.]

Fourth.—If the bankrupt shall at any time within two months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, fraudulently, in contemplation of bankruptcy, and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor, wholly or in part, or have made away with, mortgaged or charged any part of his property, of what kind soever: [See act of 1861, sect. 221, clause 8.]

Fifth.—If the bankrupt shall at any time after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever: [See act of 1861, sect. 221, clauses 3, 8.]

Sixth.—If the bankrupt shall under his bankruptcy, or at any meeting of his creditors within three months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have attempted to account for any of his property by fictitious losses or expenses: [See act of 1861, sect. 221, clause 9.]

Seventh.—If the bankrupt shall, within six months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit for the recovery of any debt or demand proveable under his bankruptcy, or shall be indebted in costs incurred in any action or suit so vexatiously brought or defended: [See act of 1861, sect. 159, clause 3.]

Eighth.—If the bankrupt shall, at any time after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing or other document relating to his trade, dealings or estate: [See act of 1861, sect. 221, clause 6.]

Ninth.—If the bankrupt shall during his trading have wilfully and with intent to conceal the true state of his affairs, have omitted to keep proper books of account; or shall wilfully, and with intent to conceal the true state of his affairs, have kept his books imperfectly, carelessly and negligently. [See act of 1861, sect. 159, clause 3.]

CCLVII. That the assignees for the time being of the estate and effects of any bankrupt, when the accounts relating to his estate shall have become records of the court, shall be deemed judgment creditors of such bankrupt for the total amount of the debts which shall by such accounts appear to be due from him to his creditors; and every creditor of any bankrupt, immediately after the proof of his debt shall have been admitted, shall be deemed a judgment creditor of such bankrupt to the extent of such proof; and the court, when it shall have refused to grant the bankrupt any further protection, or shall have refused or suspended his certificate, shall, on the application of such assignees or of any such creditor, grant a certificate under the seal of the court, in the form contained in schedule B a. to this act annexed, and every such certificate shall have the effect of a judgment entered up in one of her majesty's superior courts of common law at Westminster until the allowance of the certificate of conformity of such bankrupt; and the assignees or the creditor to whom, according to such certificate, the bankrupt shall be indebted as therein mentioned, shall be thereupon entitled to issue and enforce a writ of execution against the body of such bankrupt; and the production of any such certificate to the proper officer of any such superior court shall be sufficient authority to him to issue and seal such writ, and it shall be lawful for such superior courts to make such orders and rules in that behalf as to them shall seem fit: Provided always, that every such last-mentioned certificate shall be deemed to have been cancelled and discharged by the allowance of the certificate of conformity of such bankrupt from the time

Assignees, and creditors who have proved, to be deemed judgment creditors, and court to grant certificate thereof, which shall have the effect of a judgment of superior court at Westminster.

[Repealed by act of 1861.]

Assignees for the time being may issue execution on such certificate. [*Repealed by act of 1861.*]

Bankrupt taken in execution not to be discharged except by order of the court. [*Repealed by act of 1861.*]

Any person, refusing to be sworn, or refusing to answer, or not fully answering, or refusing to sign examination, or to produce books, &c., may be committed.

[*See ante, sects. 117, 118, and sect. 246, repealed; see also act of 1861, sect. 211.*]

[*Form 187.*]

[*See additional forms, 128.*]

Questions to be particularly specified on warrant.

[*Repealed. See act of 1861, sect. 112.*]

Assignees under fiat issued on or prior to 11th November, 1842, retaining unclaimed dividends, &c.

of such allowance: Provided also, that no execution by virtue of any certificate which shall be granted to any creditor or assignees as aforesaid shall be issued, nor shall any such certificate or execution in any manner affect any estate or effects which shall come to or be acquired by the bankrupt after the allowance of his certificate of conformity.

CCLVIII. That the assignees for the time being may issue and enforce execution upon any such certificate as last aforesaid as fully to all intents and purposes as the assignees to whom such certificate shall have been originally granted.

CCLIX. That if any bankrupt shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution, until he shall have been in prison for the full period of one year, except by order of the court: Provided always, that this enactment shall not take effect until after the expiration of six months from the commencement of this act, and then only against such persons as shall have been adjudged bankrupt under this act, and for offences committed after the commencement of this act.

CCLX. That if any bankrupt, or the wife of any bankrupt, shall refuse to make and sign the declaration contained in the schedule W. to this act annexed, or if any other person shall refuse to be sworn, or shall refuse to answer any lawful question put by the court, or shall not fully answer any such question to the satisfaction of the court, or shall refuse to sign and subscribe his examination when reduced into writing (not having any lawful objection allowed by the court), or shall not produce any books, papers, deeds and writings, or other documents in his custody or power, relating to any of the matters under inquiry, which such bankrupt, wife of the bankrupt or person is required by the court to produce, and to the production of which he shall not state any objection allowed by the court, it shall be lawful for the court, by warrant, to commit such bankrupt, wife of such bankrupt or other person, in London to the queen's prison, or in the country to such prison as such court shall think fit (as the case may be in London or in any district in the country), there to remain without bail until he shall submit himself to such court to be sworn, and full answers make to the satisfaction of such court to all such lawful questions as shall be put by the court, and sign and subscribe such examination, and produce such books, papers, deeds, writings and other documents in his custody or power, to the production of which no such objection as aforesaid has been allowed.

CCLXI. That if any person be committed by the court for refusing to answer or for not fully answering any question put to him by the court, such court shall in its warrant of commitment specify every such question: provided that if any person so committed shall bring any habeas corpus in order to be discharged from such commitment, and there shall appear on the return of such habeas corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the court or judge before whom such person shall be brought by habeas corpus, and such court or judge is hereby required, to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such court or judge by the person committed that he has fully answered all lawful questions put to him by the court, or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such court or judge that he had a sufficient reason for the same: Provided also, that such court or judge shall, if required thereto by the person committed, in case the whole of the examination of the person so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such person whereof any such question was a part; and if it shall appear from the whole examination that the answer or answers of the person committed is or are satisfactory, such court or judge shall and may order the person so committed to be discharged.

CCLXII. That if it shall at any time be made to appear to the court that any assignee under any fiat issued on or at any time prior to the eleventh day of November, one thousand eight hundred and forty-two, has, either in his own hands or in the hands of any attorney or at any bankers, or otherwise subject to

his order or disposition, or knows that there is or are in the hands or subject to the order and disposition of himself or any co-assignee, any unclaimed dividends or any undivided surplus, and that such assignee has not caused a certificate thereof to be filed as in this act above required, containing a full and true account of the names of the creditors to whom such unclaimed dividends are due, and of the amount of such dividends, and, as to any undivided surplus, caused a certificate stating the full and true amount of such surplus to be filed, and has not, as in this act above required, paid over to the account intituled "the unclaimed dividend account" the amount of such unclaimed dividends, or so much thereof as shall not have been paid to the creditors or other persons entitled thereto, and also the amount of such undivided surplus, every such assignee shall be charged, in account with the estate of the bankrupt, with interest upon the amount of such unclaimed dividends or undivided surplus at the rate of five pounds per centum per annum, to be computed from the time at which such certificate is required to be filed, for such time as he shall thenceforth, either solely or together with any co-assignee or other person, retain such dividends or undivided surplus, as the case may be, and also with such further sum as the court shall direct, not exceeding in the whole at the rate of twenty pounds per centum per annum to be computed from the time aforesaid; and it shall be lawful for the court to order that such sum or sums be forthwith paid into the bank of England to the credit of the accountant in bankruptcy to the account intituled "the unclaimed dividend account," and also to make such order as to costs as the justice of the case shall seem to require.

CCLXIII. That the neglect of any official assignee to file a certificate as required by this act of all unclaimed dividends and undivided surplus belonging to any bankrupt's estate under his care and management shall be subject to the provisions hereinbefore contained with respect to the unclaimed dividends and undivided surplus therein mentioned, and as if such official assignee had such dividends and undivided surplus in his own hands.

Official assignee not filing certificate of unclaimed dividends subject to penalty.

CCLXIV. That such last-mentioned unclaimed dividends and undivided surplus, and any penalty payable by any official assignee in respect thereof, shall be paid into the bank of England, or carried to the credit of the accountant in bankruptcy to the said account intituled "the unclaimed dividend account."

Such unclaimed dividends to be paid, or carried to the unclaimed dividend account.

CCLXV. That if any assignee shall retain in his hands or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ, any sum to the amount of more than one hundred pounds, part of the estate of any bankrupt, or shall neglect to invest any money in the purchase of exchequer bills when directed by the court, every such assignee shall be liable to be charged in his account with such sum as shall be equal to interest at the rate of twenty per centum per annum on all such money for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed, or during which he shall so have neglected to invest the same in the purchase of exchequer bills; and the court is hereby required to charge every such assignee in his account accordingly.

Assignee disobeying direction to pay or invest money, and retaining it, or permitting co-assignee to retain or employ it, to be charged with 20 per cent.

[See also act of 1861, sect. 175.]

CCLXVI. That if any person shall disobey any rule or order of the court duly made by such court for enforcing any of the purposes and provisions of this act, or of any other act hereafter to be in force relating to the subject matters of this act, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, the court may, by warrant in the form contained in schedule B b. (a) to this act annexed, commit the person so offending to the queen's prison, or to the common gaol of any county, city or place where he shall be found, or where he shall usually reside, there to remain without bail or mainprise until such court, or the vice-chancellor or the lord chancellor, shall make order to the contrary.

Persons disobeying any rule or order of court to be committed to prison until they conform, or the court, or vice-chancellor, or the lord chancellor, shall otherwise order.

[Repealed; but see act of 1861, sect. 226; G. O., 19th Oct. 1852, rr. 19, 20; C. C. form, 70.]

(a) Apparently superseded by act of 1861, sched. F.

CCLXVII. That if the debt stated by the petitioning creditor in his affidavit or in his petition for adjudication, and verified by affidavit, to be due to him from any trader, shall not be really due, or if after a fiat issued, or petition for adjudication of bankruptcy filed, it shall not have been proved that the person against whom such fiat has been issued or petition filed had committed an act of bankruptcy and was a trader at the time of the issuing of the fiat or filing of

If debt sworn to by petitioning creditor be not due, or if act of bankruptcy be not proved, and it appear that the fiat or petition

was issued or filed fraudulently or maliciously, court may order satisfaction.
[See also act of 1861, sect. 91.]

Petitioning creditor compounding with trader after bankruptcy.

Concealing bankrupt's effects.

Allowance to persons making discovery.

Obtaining money, goods, &c. as an inducement to forbear opposition, or to consent to allowance of certificate.
[Repealed; but see act of 1861, sect. 167.]

Officers, &c. taking fees improperly.

[Repealed; but see act of 1861, sect. 43; see also same act, sect. 44.]

Inserting advertisements without authority.

Forging signature of commissioner, or officer, or the seal of the court.

[See also act of 1861, sect. 205.]

Gaoler suffering persons committed to escape, &c.

such petition, and it shall also appear that such fiat was issued, or that such petition was filed, fraudulently or maliciously, the court shall and may, upon petition of the person against whom any such fiat or petition was so issued or filed, examine into the same, and order satisfaction to be made to him for the damages by him sustained.

CCLXVIII. That if any petitioning creditor shall after the bankruptcy receive any money, satisfaction or security for his debt or any part thereof, whereby such petitioning creditor may receive more in the pound in respect of his debts than the other creditors, such petitioning creditor shall forfeit his whole debt, and shall also repay or deliver up such money, satisfaction or security, or the full value thereof, to the assignee or assignees of such bankrupt, for the benefit of the creditors of the bankrupt.

CCLXIX. That any person who shall wilfully conceal any real or personal estate of the bankrupt, and who shall not, within forty-two days after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, discover such estate to the court or to the assignees, shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person who shall after such time voluntarily discover to the court or to the assignees any part of such bankrupt's estate not before come to the knowledge of the assignees shall be allowed five per centum thereupon, and such further reward as the assignees, with the consent of the court, shall think fit, to be paid out of the estate recovered on such discovery.

CCLXX. That if any creditor of a bankrupt shall obtain any sum of money, or any goods, chattels or security for money, from any person, as an inducement for forbearing to oppose or for consenting to the allowance of the certificate of such bankrupt, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels or security so obtained (as the case may be).

CCLXXI. That if any commissioner, registrar, accountant, master, clerk, messenger, assignee or any other officer or person whatsoever shall, for anything done or pretended to be done under this act or any other act relating to bankrupts, or under colour of doing anything under this act or any such other act, fraudulently and wilfully demand or take, or appoint or allow any person whatsoever to take, for him or on his account, or for or on account of any person by him named, or in trust for him or for any other person by him named, any fee, emolument, gratuity, sum of money, or anything of value whatsoever other than is allowed by this act or any such other act as aforesaid, such person, when duly convicted thereof, shall forfeit and pay the sum of five hundred pounds, and be rendered incapable and is hereby rendered incapable of holding any office or place under her majesty.

CCLXXII. That any person who shall insert or cause to be inserted in the London Gazette, or in any newspaper, any advertisement under this act, without authority, or knowing the same to be false in any material particular, shall be guilty of a misdemeanor.

CCLXXIII. That if any person shall forge the signature of any commissioner or registrar, or of the accountant, master or other officer of the court, or shall forge or counterfeit the seal of the court, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any such proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such commissioner, registrar, accountant, master or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an act passed in the parliament holden in the eighth and ninth years of the reign of her present majesty, intituled "An Act to facilitate the Admission in Evidence of certain Official and other Documents."

CCLXXIV. That if any keeper of any prison or any gaoler to whose custody any bankrupt or other person shall be duly committed shall refuse to receive such bankrupt or other person, or shall suffer him to escape, every such keeper or gaoler shall forfeit five hundred pounds.

CCLXXV. That all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath, affirmation or declaration thereby directed or authorized, may be sued for by the assignees of the estate and effects of any bankrupt connected therewith or interested therein in any of her majesty's superior courts of record, and the money so recovered (the charges of suit being deducted) shall be paid over to the bank of England, to the credit of the accountant in bankruptcy, to the account intituled "the chief registrar's account."

Application of forfeitures.
[See act of 1861, sect. 227.]

And with respect to the definition and explanation of terms, be it enacted,

CCLXXVI. That the terms and words hereinafter enumerated or explained, wheresoever occurring in this act, shall be understood as hereinafter defined or explained, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such definition or explanation; that is to say,

40.
Definition of Terms, &c.

[Repealed. See act of 1861, sect. 229.]

The term "lord chancellor" shall mean also and include the lord keeper and lords commissioners for the custody of the great seal of the united kingdom for the time being:

"Lord chancellor:"

The term "vice-chancellor" shall mean such one of the vice-chancellors of the high court of chancery as shall for the time being have duly vested in him jurisdiction in bankruptcy:

"Vice-chancellor:"

The term "the court" and the term the "court of bankruptcy" shall mean her majesty's court of bankruptcy, and shall mean also and include any commissioner or commissioners of her majesty's court of bankruptcy constituting and acting as a court under this act:

"Court:"

The term the "senior commissioner" shall mean the senior commissioner of the court acting in London, which seniority shall be determined by the date of the letters patent or commission under which the commissioners of the court acting in London were or shall be appointed, and in the event of such letters patent or commission bearing the same date, then by the place and precedence of such commissioners at the bar:

"Senior commissioner:"

The terms "fiat" and "fiat in bankruptcy" shall mean also and include any commission of bankrupt:

"Fiat" and "fiat in bankruptcy:"

The term "annulling" shall mean also and include "superseding:"

"Annulling:"

The term "month" shall mean a calendar month:

"Month:"

The term "assignees" shall mean the assignees of the estate and effects of the bankrupt:

"Assignees:"

The term "oath" shall be deemed to include the declaration or affirmation of any person authorized by law to declare or affirm:

"Oath:"

The term "bank of England" shall include all branches thereof:

"Bank of England:"

Words importing the singular number or the masculine gender only shall be understood to mean several matters as well as one matter, and several persons as well as one person, and bodies corporate as well as individuals, and females as well as males; and words importing the plural number shall be understood to apply to one matter as well as more than one, and to one person as well as more than one:

Number and gender.

And in all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, Monday or Tuesday in Easter week, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

Where any particular number of days is prescribed for doing any act, how time to be reckoned.

CCLXXVII. And be it enacted, That this act shall extend to aliens and denizens, both to make them subject thereto and to entitle them to all the benefits given thereby.

41.
Aliens and denizens.

CCLXXVIII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

42.
Act may be amended, &c.

SCHEDULES referred to in the foregoing Act.

SCHEDULE A.

ACTS and PARTS of ACTS repealed.

Date of Act.	Title.	Extent of Repeal.
6 Geo. 4, c. 16	An Act to amend the Laws relating to Bankrupts.	The whole.
1 & 2 Will. 4, c. 56 ..	An Act to establish a Court of Bankruptcy.	The whole, except as hereinbefore in the Bankrupt Law Consolidation Act, 1849, is excepted, and except so far as relates to the appointment, tenure of office, and removal of commissioners, registrars, deputy registrars, and official assignees of the court of bankruptcy, and except so far as the act prohibits such commissioners, registrars, and deputy registrars from practising as a barrister, or being an attorney or solicitor, or renders such commissioners, registrars, deputy registrars, official assignees, and the lord chancellor's secretary of bankrupts, incapable of being elected or sitting as a member of the house of commons, and except so far as relates to the grant of compensations to officers and persons whose offices, places, fees or emoluments were discontinued and abolished.
3 & 4 Will. 4, c. 47 ..	An Act to authorize His Majesty to give further Powers to the Judges of the Court of Bankruptcy, and to direct the times of Sitting of the Judges and Commissioners of the said Court.	The whole.
1 & 2 Vict. c. 110 ..	An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases, for extending the remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England.	So far as relates to the manner of making bankrupt any trader within the meaning of the laws then in force respecting bankrupts, upon the filing of an affidavit or affidavits of debt or debts in the court of bankruptcy, and after notice in writing requiring immediate payment of such debt or debts.
2 Vict. c. 11	An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy.	So far as relates to the protection of purchasers against secret acts of bankruptcy, and fiats in bankruptcy.

SCHEDULE A.—*continued.*

Date of Act.	Title.	Extent of Repeal.
2 & 3 Vict. c. 29	An Act for the better Protection of Parties dealing with Persons liable to the Bankrupt Laws.	The whole.
5 & 6 Vict. c. 122 . .	An Act for the Amendment of the Law of Bankruptcy.	The whole, except as hereinbefore in the Bankrupt Law Consolidation Act, 1849, is excepted, so far as the act repeals any other act or acts, or any part of any other act or acts, and except so far as relates to the appointment, tenure of office, and removal of additional commissioners, deputy registrars, and official assignees to act in the country, except so far as relates to the salaries of commissioners, and except so far as relates to the transfer of the duties and business of the clerk of enrolments to the registrar of the court acting in Basinghall-street, and except so far as relates to retiring annuities and allowances, and except so far as relates to the allowance of travelling and other expenses to the commissioners and deputy registrars.
7 & 8 Vict. c. 96	An Act to amend the Law of Insolvency, Bankruptcy and Execution.	So far as relates to the powers of the lord chancellor to issue fiat against a trader upon petition of the trader himself, and to attach the commissioners acting in the country to any district.
8 & 9 Vict. c. 48	An Act to substitute a Declaration for an Oath in Cases of Bankruptcy.	So far as relates to England.
10 & 11 Vict. c. 102 . .	An Act to abolish the Court of Review in Bankruptcy, and to make Alterations in the Jurisdiction of the Court of Bankruptcy and Court for the Relief of Insolvent Debtors.	So far as the act enacts that all laws, orders and authorities touching the practice and manner of proceeding in the court of review, and appealing to and from that court, shall continue in force and be applicable to the jurisdiction of the vice-chancellor appointed to act in bankruptcy, and so far as the act enacts that all sums and fees shall continue to be payable and receivable by the like persons, and to be paid and applied to the like purposes, as the same had theretofore been paid and received in respect of any matter in the said court of review.
11 & 12 Vict. c. 86 . .	An Act to empower the Commissioners of the Court of Bankruptcy to order the Release of Bankrupts from Prison in certain Cases.	The whole.

[Referred to in
sect. 45, repealed.]

SCHEDULE B.

[Return by Official Assignees to Parliament of particulars of Estates under their charge. (Obsolete.)]

[Referred to in
sect. 48, repealed.]

SCHEDULE C.

[List of Stamps for which now is substituted Schedule B. of Act of 1861.]

SCHEDULE D.

[Declaration of Insolvency superseded by General Order, 12th October, 1861, Schedule 7.]

[Sect. 77.]

SCHEDULE E.

The Bankrupt Law Consolidation Act, 1849.

Writ of Summons to be served on a Member of Parliament in order to enforce the Provisions of "The Bankrupt Law Consolidation Act, 1849."

Victoria, etc.

To C. D. of etc.

Esquire, having privilege of parliament, greeting :

We command you, that, within one calendar month next after personal service hereof on you, you do cause an appearance to be entered for you in our court of in an action [on promises, or debt, or as the case may be], at the suit of A. B.; and you are hereby informed, that an affidavit of debt for the sum of hath been filed in the proper office, according to the provisions of "The Bankrupt Law Consolidation Act, 1849," and that unless you pay, secure or compound for the debt sought to be recovered in this action, or enter into such bond as by the said act is provided, and cause an appearance to be entered for you, within one calendar month next after such service hereof, you will be deemed to have committed an act of bankruptcy from the time of the service hereof.

Witness at Westminster, the day of .

This writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards, and is to be endorsed with the name of the plaintiff or his attorney in manner following ; that is to say,

This writ was issued by E. F., of attorney for the plaintiff [or plaintiffs] within named;

or,

This writ was issued in person by the plaintiff within named, who resides at [mention the city, town or parish, and also the name of the hamlet, street and number of the house of the plaintiff's residence, if any such there be].

[Sect. 78. G. O.,
19th Oct. 1852,
r. 72.]

SCHEDULE F.

The Bankrupt Law Consolidation Act, 1849.

Affidavit for summoning a Trader Debtor.

A. B. of and C. D. of severally make oath and say, and first this deponent A. B. for himself saith, that E. F. is justly and truly indebted to this deponent in the sum of [the amount of the debt] for, &c. [stating the nature of the debt with certainty and precision]; and this deponent further saith, that the said E. F., as this deponent verily believes, is a trader within the meaning of the law of bankruptcy, and resides at and that an account in writing of the particulars of the demand of the said A. B., amounting to the said sum of [the amount of the debt] with a notice thereunder written in the form prescribed by "The Bankrupt Law Consolidation Act, 1849," requiring immediate payment of the said debt, is hereunto annexed; and this deponent C. D. for himself saith, that he did, on the day of instant [or last], personally [or otherwise according to the fact] serve the said E. F. with a true copy of the said account and notice.

Sworn, &c.

SCHEDULE G.

The Bankrupt Law Consolidation Act, 1849.

*Particulars of Demand, and Notice requiring Payment.*To *E. F.* of

The following are the particulars of the demand of the undersigned *A. B.* of against you the said *E. F.*, amounting to the sum of [the amount of the debt. Then copy the account.]

Take notice, That I the said *A. B.* hereby require immediate payment of the said sum of . Dated this day of in the year of our Lord

(Signed) *A. B.*

[Sect. 78. G. O.,
19th Oct. 1852,
rr. 78—80.]

SCHEDULE H.

The Bankrupt Law Consolidation Act, 1849.

Summons of Trader Debtor.

These are to will and require you to whom this warrant is directed personally to be and appear before the court of bankruptcy in Basinghall-street, in the city of London [or at in the county of] on the day of at o'clock; and you are hereby informed that the purpose for which you are thus summoned to appear before the said court is to ascertain, in manner and form prescribed by "The Bankrupt Law Consolidation Act, 1849," whether or not you admit the demand of *A. B.* of (who claims of you the sum of [state the amount] for a debt), or any and what part thereof, or whether you verily believe that you have a good defence upon the merits to the said demand, or to any and what part thereof; and hereof you are not to fail, at your peril.

Given under my hand, the day of in the year of our Lord
(Signed) *C. D.*, Commissioner.

[Sect. 78. G. O.,
19th Oct. 1852,
rr. 73—77.]

[For indorsement,
see r. 74.]

SCHEDULE I.

The Bankrupt Law Consolidation Act, 1849.

Admission of Debt by Trader Debtor.

Court of Bankruptcy, Basinghall Street, London,
(or at in the county of)
day of A.D.

Whereas I the undersigned *E. F.*, of am summoned to appear before this honourable court for the purpose of stating in manner prescribed by "The Bankrupt Law Consolidation Act, 1849," whether or not I admit the demand of *A. B.* of (who claims of me the said *E. F.* the sum of [the amount] for a debt), or any and what part thereof; or whether I verily believe that I have a good defence upon the merits to the said demand, or to any and what part thereof; be it known, that I the said *E. F.* hereby confess that I am indebted to the said *A. B.* in the said sum of [or in part of the said sum of that is to say, in the sum of].

(Signed) *E. F.*

[Sect. 79. G. O.,
19th Oct. 1852, r.
79.]

SCHEDULE J.

The Bankrupt Law Consolidation Act, 1849.

Deposition by Trader Debtor that he has good Answer to Creditor's Demand, or some Part thereof.

Court of Bankruptcy, Basinghall Street, London,
(or at in the county of)
day of A.D.

E. F. being sworn on the day and year and at the place aforesaid, upon his oath saith, that he verily believes he has a good defence upon the merits to the demand [or to part of the demand] hereinafter mentioned of *A. B.* of who claims of the said *E. F.* the sum of for a debt alleged to be due and owing from the said *E. F.* to the said *A. B.*, as stated in the affidavit of the said *A. B.*, filed in this honourable court, and bearing date the day of

Sworn before me, (Signed) *E. F.*

J. K., Commissioner.

[Sect. 79. G. O.,
19th Oct. 1852, r.
79.]

[Sect. 79. G. O.,
19th Oct. 1852,
rr. 79, 82, 87.]

SCHEDULE K.

Form of Bond to pay admitted Demand.

Know all men by these presents, that we, *A. B.*, *C. D.* and *E. F.*, are jointly and severally held and firmly bound to *E. F.* in the sum of _____ of lawful money of Great Britain, to be paid to him, his executors, administrators or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, our heirs, executors, and administrators.

Dated this _____ day of _____ in the year of our Lord 184 .

(L.S.)

(L.S.)

(L.S.)

Whereas the said *A. B.*, after being duly summoned to appear in her majesty's court of bankruptcy, for the purpose of stating whether or not he admits a certain demand of the said *E. F.* amounting to the sum of _____ or any and what part thereof, or whether he verily believes that he hath a good defence upon the merits to the said demand, or to any and what part thereof, hath deposed upon oath [*or affirmation, as the case may be,*] that he verily believes that he the said *A. B.* hath a good defence upon the merits to the said demand [*or to* _____ part of the said demand]: *and whereas an action of debt [*or as the case may be,*] wherein the said *E. F.* is plaintiff and the said *A. B.* is defendant, is now depending in [*name of court in which the action is depending*] for the recovery of the said demand [*or last-mentioned sum, as the case may be*]: now, therefore, the condition of this obligation is such, that if the said *A. B.* shall on demand, well and truly pay to the said *E. F.*, or his attorney or agent, such sum as shall be recovered by, together with such costs as shall be given to, the said *E. F.* in such action, this obligation shall be void and of no effect, but otherwise shall be and remain in full force and virtue. [*Or if an action has not been already brought, insert, instead of the paragraph following the *, these words:* now, therefore, the condition of this obligation is such, that if the said *A. B.* shall, on demand, well and truly pay or cause to be paid to the said *E. F.*, his attorney or agent, such sum or sums as shall be recovered by, together with such costs as shall be given to, the said *E. F.* in any action which shall hereafter be brought for the recovery of the said demand [*or last-mentioned sum, as the case may require*], this obligation shall be void and of no effect, but otherwise shall be and remain of full force and virtue.

[Sect. 84]

SCHEDULE L.

The Bankrupt Law Consolidation Act, 1849.

Admission of Debt by Trader Debtor signed out of Court.

I, the undersigned *E. F.*, of _____ do hereby confess, that I am indebted to *A. B.*
of _____ in the sum of _____

Dated this _____ day of _____ A.D. _____ (Signed) *E. F.*

Witness,

G. H., attorney for the said *E. F.*, and subscribing witness to the execution hereof as such attorney.

[Creditor's petition
for adjudication,
amended by G. O.,
12th Oct. 1861,
sched. 1.]

SCHEDULE M.

The Bankrupt Law Consolidation Act, 1849.

Petition by a Creditor for Adjudication of Bankruptcy.

To the court of bankruptcy for the _____ district.

The humble petition of
Showeth,

That _____ being a trader, and having resided [*or carried on business, as the case may be,*] for six calendar months next immediately preceding the date of this petition within the district of this honourable court, that is to say, at [*insert the name of the place*], is indebted unto your petitioner in the sum of fifty [*if two petitioners, seventy, and if three or more, one hundred*] pounds [*as the case may be,*] and that your peti-

tioner has been informed and believes that the said did lately commit an act of bankruptcy within the true intent and meaning of the law of bankruptcy.

Your petitioner therefore humbly prays, that on proof of the requisites in that behalf adjudication of bankruptcy may be made against the said

And your petitioner shall ever pray, &c.

Signed by the petitioner on the day
of 184 , in the presence of
solicitor in the matter of this petition.

If the petition be by partners, alter the form accordingly, and let it be signed by one on behalf of himself and partners.

If the petition be by several, not being partners, then it must be signed by each, and in such case the names of the several petitioners should be stated in the attestation or attestations relating thereto respectively.

If the petitioner cannot speak to the place of residence or business of the trader, strike out the averment as to that, and annex to the petition a separate affidavit of some person who can depose to the fact.

If the petition be against partners, alter the form accordingly.

SCHEDULE N.

The Bankrupt Law Consolidation Act, 1849.

Affidavit of Truth of Allegations in Petition.

[Alter now heading thus:—"The Bankruptcy Act, 1861."]

Day of A.D.
of in the of the petitioner named in the petition here-
unto annexed, maketh oath and saith, that the several allegations in the said petition
are true.

Sworn at this day of , one thousand eight hundred
and , before me,

If the petitioner affirm, alter the form accordingly.

[See General Order, 12th October, 1861, Sched. 2, notes which refer rather to the affidavit than the petition.]

SCHEDULE O.

The Bankrupt Law Consolidation Act, 1849.

Petition by a Trader for Adjudication of Bankruptcy against himself.

[Superseded by G. O., 12th Oct. 1861, sched. 2.]

SCHEDULE P.

The Bankrupt Law Consolidation Act, 1849.

Order to prosecute a Petition for Adjudication of Bankruptcy in a particular District.

Court of Bankruptcy, Basinghall Street, London,
the day of A.D.

In the matter of a petition for adjudication of bankruptcy against C. D. of &c.

Upon application made to me this day by [of counsel or solicitor] for and
upon reading the affidavit of , I do hereby order that the petition for adjudication of bankruptcy against the above-named C. D. be prosecuted in the dis-
trict. A. B., Commissioner.

[Sect. 90. Act of 1861, sect. 88.]

SCHEDULE Q.

The Bankrupt Law Consolidation Act, 1849.

Order to consolidate Proceedings, or to impound any Petition for Adjudication of Bankruptcy, and the Proceedings thereunder, or any Part thereof.

Court of Bankruptcy, Basinghall Street, London,
the day of A.D.

Ex parte

In the matter of

Upon application made to me this day by [of counsel or solicitor] for
and upon reading the affidavit of I do order that [stating the order].
A. B., Commissioner.

[Sect. 90. Act of 1861, sect. 88.]

SCHEDULE U.

[Sect. 104.]

The Bankrupt Law Consolidation Act, 1849.

Order annulling Adjudication.

Court of Bankruptcy, Basinghall Street, London,
 (or at in the county of)
 day of A.D.

In the matter of

Upon reading the proceedings in the above matter, and upon hearing [the evidence now adduced, *if the case be so*, and] what was alleged by and being satisfied that the petitioning creditor's debt, trading and act of bankruptcy [or *specify the particular matter deemed insufficient, as the case may require*,] upon which the adjudication of bankruptcy made against the said on the day of was grounded, were and are [or was and is] insufficient to support such adjudication, and no other debt, trading or act of bankruptcy [or *specifying the particular matter requisite in lieu of that deemed insufficient, as the case may require*,] sufficient to support such adjudication being proved, I do order that the adjudication of bankruptcy made against the said on the said day of be annulled, and the same is hereby annulled accordingly.

A. B., Commissioner.

SCHEDULE V.

[Sect. 106.]

The Bankrupt Law Consolidation Act, 1849.

Search Warrant.

Day of A.D.

Whereas by evidence duly taken upon oath it hath been made to appear to the satisfaction of me the undersigned commissioner of the court of bankruptcy acting in the prosecution of a petition for adjudication of bankruptcy filed and now in prosecution against A. B. of in the county of bearing date the day of and under which the said A. B. has been adjudged bankrupt, that there is reason to suspect and believe that property of the said A. B. is concealed in the house [or *other place, describing it, as the case may be*,] of one C. D. of in the county of such house not belonging to the said bankrupt: these are, therefore, by virtue of the "Bankrupt Law Consolidation Act, 1849," to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the house [or *other place, describing it, as the case may be*,] of the said C. D. situate at aforesaid, and there diligently to search for the said property, and if any property of the said bankrupt shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said act.

Given under my hand and the seal of the court, at the court of bankruptcy, London,
 [or at the court of bankruptcy for the district at in the county of], this day of in the year of our Lord one thousand eight hundred and A. B. (L.S.)

To , my messenger and his assistants.

Commissioner.

If there be reason to suspect that the bankrupt and his property are concealed, alter the warrant accordingly.

SCHEDULE W.

[Sects. 117, 118.
 Act of 1861, sect.
 211, superseded
 sched. E. to act of
 1861.]

The Bankrupt Law Consolidation Act, 1849.

Form of Declaration to be made by the Bankrupt or the Bankrupt's Wife.

I, A. B., the person declared a bankrupt under a fiat in bankruptcy dated the day of [or under a petition for adjudication of bankruptcy filed on the day of in the year of our Lord] [or I, C. D., the wife of A. B. declared a bankrupt under a fiat in bankruptcy dated the day of , or under a petition for adjudication of bankruptcy filed on the day of] do solemnly promise and declare, that I will make true answer to all such questions as may be proposed to me respecting all the property of the said A. B., and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information and belief.

(Signed) A. B.

[or C. D. the wife of the said A. B.]

[Sect. 123. See act
of 1861, sect. 111.]

SCHEDULE X.

The Bankrupt Law Consolidation Act, 1849.

Admission of Debt by Creditor (a) of Bankrupt.

I, the undersigned *I. K.* of do hereby, in open court, confess that I am indebted to *E. F.* of a bankrupt, in the sum of , upon the balance of accounts between myself and the said *E. F.*

Witness, *G. H.*

(Signed) *I. K.*

Registrar [or other officer of the court.]

(a) This is obviously a misprint in the queen's printers copy for "debtor."

[Sect. 123.]

SCHEDULE Y.

The Bankrupt Law Consolidation Act, 1849.

Order for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt.

Court of Bankruptcy, Basinghall Street, London,
(or at in the county of).
day of A.D.

In the matter of a bankrupt.

Whereas of in his examination taken day of and signed and subscribed by the said has admitted that he is indebted to the above-named bankrupt in the sum of upon the balance of accounts between the said and the said bankrupt: it is hereby ordered that the said do pay to the official assignee of the estate and effects of the said bankrupt, in full discharge of the sum so admitted, the sum of forthwith [or if otherwise, state the time and manner of payment], and that the said do also pay to the said official assignee the sum of for the costs of and incident to the summons of the said in his behalf.

C. D., Registrar.

A. B., Commissioner.

If the court shall not adjudge the costs of and incident to the summons to be paid by the person summoned, or if the court shall adjudge the official assignee to pay to the person summoned his costs, out of the estate and effects of the bankrupt, alter the form accordingly.

[Sects. 198 et seq.,
obsolete. See act of
1861, sects. 157 et
seq.]

SCHEDULE Z.

The Bankrupt Law Consolidation Act, 1849.

Certificate of Conformity.

[Sects. 211, 212,
obsolete.]

SCHEDULE A a.

The Bankrupt Law Consolidation Act, 1849.

Petition for Arrangement.

[Sect. 212, obsolete.]

SCHEDULE A b.

The Bankrupt Law Consolidation Act, 1849.

Affidavit in support of Petition for Arrangement.

[Sect. 221, obsolete.]

SCHEDULE A c.

The Bankrupt Law Consolidation Act, 1849.

Certificate to Petitioning Trader.

[Sect. 221, obsolete.]

SCHEDULE A d.

The Bankrupt Law Consolidation Act, 1849.

Certificate to Official Assignee.

SCHEDULE B a.

[Sect. 257, obsolete.]

The Bankrupt Law Consolidation Act, 1849.

Certificate to Assignees or to a Creditor to entitle them to issue Writ of Execution.

SCHEDULE B b.

The Bankrupt Law Consolidation Act, 1849.

Warrant against Person disobeying any Rule or Order of Court.

[Sect. 266; see also sect. 260: both repealed. See act of 1861, sects. 226, 112; and form superseded by act of 1861, scheds. F and C.]

3 & 4 WILL. IV. c. 74.

[Sections to be read as part of the act of 1849. See sect. 208 of that act.]

An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance. [28th August, 1833.]

LVI. And be it further enacted, that any commissioner acting in the execution of any fiat which, after the thirty-first day of December, one thousand eight hundred and thirty-three, shall be issued in pursuance of the said act passed in the first and second years of the reign of king William the fourth, under which any person shall be adjudged a bankrupt, who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail if he had not become bankrupt could have done under this act at the time of such disposition: provided always, that if at the time of the disposition of such lands, or any of them, by such commissioner as aforesaid, there shall be a protector of the settlement (a) by which the estate of such actual tenant in tail in the lands disposed of by such commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become a bankrupt, to have disposed of such lands, to the full extent to which, if there had been no such protector, he could under this act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such commissioner, shall be as large an estate as the actual tenant in tail, if he had not become bankrupt, could at the time of such disposition have created under this act in such lands without the consent of the protector.

The commissioner, in the case of an actual tenant in tail becoming bankrupt after the 31st Dec. 1833, by deed to dispose of the lands of the bankrupt to a purchaser.

- (a) By the first section of the statute, "Every assurance already made, or hereafter to be made, whether by deed, will, private act of parliament or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement;" and by the 22nd section, the owner of the first existing estate under a settlement prior to an estate tail under the same settlement, is to be the protector of the settlement; and as to the party who shall be protector in particular cases, see sects. 23—33.

LVII. And be it further enacted, that any commissioner acting in the execution of any such fiat as aforesaid under which any person shall be adjudged a bankrupt, who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created; and by such disposition the base fee shall be enlarged into as large an estate as the same

Commissioner, in case of a tenant in tail entitled to a base fee becoming bankrupt, and of there being no protector, by deed to dispose of the lands of the bankrupt, to a purchaser.

could at the time of such disposition have been enlarged into under this act by the person so entitled if he had not become bankrupt.

As to the consent of the protector in case of bankruptcy.

LVIII. And be it further enacted, that the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands, or any of them, by such commissioner as aforesaid, if made with the consent of such protector, shall, whether such commissioner may have made under this act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under the said acts of the sixth year of king George the fourth, and the first and second years of king William the fourth, or either of them, or any acts hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this act with the consent of such protector; and all the previous clauses in this act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court-roll, and in regard to the time and manner of giving such consent, and in regard to the enrolment of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the commissioner shall be effected, shall, except so far as the same may be varied by the clause next hereinafter contained, apply to every consent that may be given by virtue of this present clause.

As to the enrolment in chancery of the deed of disposition of freehold lands, and the entry on the court rolls of the deed of disposition of copyhold lands;

and of the deed of consent.

LIX. And be it further enacted, that every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands not held by a copy of court-roll, shall be void unless enrolled in his majesty's high court of chancery within six calendar months after the execution thereof; and every deed, by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands held by copy of court-roll, shall be entered on the court-rolls of the manor of which the lands may be parcel; and if there shall be a protector who shall consent to the disposition of such lands held by copy of court-roll, and he shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the commissioner; and such deed of consent shall be entered on the court-rolls; and it shall be imperative on the lord of every manor of which any lands disposed of under this act by any such commissioner as aforesaid may be parcel, or the steward of such lord, or the deputy of such steward, to enter on the court-rolls of the manor every deed required by this present clause to be entered on the court-rolls, and he shall indorse on every deed so entered a memorandum, signed by him, testifying the entry of the same on the court-rolls.

Subsequent enlargement of base fees created by the disposition of the commissioner.

LX. And be it further enacted, that if any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands, and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the disposition by such commissioner as aforesaid there had been no such protector.

Enlargement of base fees subsequent to the sale or conveyance of

LXI. And be it further enacted, that if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base

fee was created, and if such lands shall be sold or conveyed under the said acts of the sixth year of king George the fourth, and the first and second years of king William the fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, and if at any time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this act, if at the time of the adjudication of such bankruptcy there had been no such protector, and the commissioner acting in the execution of the fiat under which the tenant in tail so entitled shall have been adjudged a bankrupt had disposed of such lands under this act.

the same under the bankrupt acts.

LXII. Provided always, and be it further enacted, that where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such fiat as aforesaid, and the commissioner acting in the execution of such fiat shall make any disposition under this act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such commissioner as aforesaid, whether such commissioner may have made under this act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said acts of the sixth year of king George the fourth, and the first and second years of king William the fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, the disposition by such commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; and if at the time of the disposition by such commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this act of confirming the same without such consent; and if at any time after the disposition of such lands by such commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this act: provided always, that if the disposition by any such commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, confirmed by the disposition of the commissioner, if no protector, or being such with his consent, or on there ceasing to be a protector; but not against a purchaser without notice.

LXIII. And be it further enacted, that all acts and deeds done and executed by a tenant in tail of lands of any tenure who shall be adjudged a bankrupt under any such fiat as aforesaid, and which shall affect such lands or any of them, and which, if he had been seised of or entitled to such lands in fee-simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this act by such commissioner as aforesaid.

Acts of a bankrupt tenant in tail void against any disposition under this act by the commissioner.

LXIV. Provided always, and be it further enacted, that subject and without prejudice to the powers of disposition given by this act to the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of

Subject to the powers given to the commissioner, and to the estate in the assignees,

a bankrupt tenant in tail shall retain his powers of disposition.

The disposition by the commissioner of the lands of a bankrupt tenant in tail shall, if the bankrupt be dead, have in the cases herein mentioned the same operation as if he were alive.

Every disposition by the commissioner of copyhold lands where the estate shall not be equitable, to have the same operation as a surrender; and the person to whom such land shall have been disposed of may claim to be admitted on paying the fines, &c.

Assignees to recover rents of the lands of a bankrupt, of which the commissioner has power to make disposition, and to enforce covenants, as if entitled to the reversion. This clause to apply to all copyhold lands; but as to other lands only to such as the commissioner

any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the same powers of disposition under this act in regard to such lands as he would have had if he had not become bankrupt.

LXV. And be it further enacted, that any disposition under this act of lands of any tenure by any commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands, shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition, be in the following cases as valid and effectual as the same would have been, and have the same operation under this act as the same would have had, if the bankrupt were alive; (that is to say), in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition, or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue who if the base fee had not been created would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition.

LXVI. And be it further enacted, that every disposition which under this act may be made by any commissioner acting in the execution of any such fiat as aforesaid of lands held by copy of court-roll shall, in every case in which the estate of the bankrupt in such lands shall not be merely an estate in equity, operate in the same manner as if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, been duly surrendered into the hands of the lord of the manor of which they may be parcel, to the use of the person to whom the same shall have been disposed of by such commissioner; and the person to whom the lands shall have been so disposed of by such commissioner may claim to be admitted tenant of such lands, to hold the same by the ancient rents, customs and services, in the same manner as if such lands had been duly surrendered to his use into the hands of the lord of the manor of which such lands may be parcel; and shall, upon being admitted tenant of such lands, to hold the same as aforesaid, pay the fines, fees and other dues which could have been lawfully demanded upon such admittance if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, passed by surrender into the hands of the lord, to the use of the person so admitted.

LXVII. And be it further enacted, that the rents and profits of any lands of which any commissioner acting in the execution of any such fiat as aforesaid hath power to make disposition under this act shall in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged bankrupt under the fiat, be received by the assignees of the estate of the bankrupt for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and profits, or may distrain for the same upon the lands subject to the payment thereof, and in case any action of trespass shall be brought for taking any such distress may plead thereto the general issue, and give this act or other special matter in evidence, and also, in case any such distress shall be replevied, shall have power to avow or make cognizance generally

in such manner and form as any landlord may now do by virtue of the statute made in the eleventh year of the reign of his majesty king George the second, intituled "An Act for the more effectual securing the Payment of Rents and preventing Frauds by Tenants," or by any other law or statute now in force or hereafter to be made for the more effectually recovering of rent in arrear; and such assignees, and their bailiffs, agents and servants, shall also have all such and the same remedies, powers, privileges and advantages of pleading, avowing and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions and agreements in respect of the lands of which such commissioner as aforesaid hath the power of disposition under this act, and in respect of the rents and profits thereof, and of entry into and upon the same lands for the non-observance of any such covenant, condition and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions and agreements, as the bankrupt would have had in case he had not been adjudged a bankrupt: provided always, that this clause shall apply to all lands held by copy of court-roll, but shall only apply to those lands of any other tenure which any commissioner acting in the execution of any such fiat as aforesaid may have power to dispose of under this act after the bankrupt's decease.

may dispose of after the bankrupt's death.

11 Geo. 2, c. 19.

LXVIII. And be it further enacted, that all the provisions in this act contained, for the benefit of the creditors of persons, who under such fiats as aforesaid shall be adjudged bankrupts after the thirty-first day of December, one thousand eight hundred and thirty-three, and for the confirmation in consequence of bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in Ireland of such persons as fully and effectually as if this act had throughout extended to lands of any tenure in Ireland; saving always the rights of the king's most excellent majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland.

All the provisions of the act in regard to bankrupts shall apply to their lands in Ireland.

LXIX. Provided always, and be it further enacted, that in all cases of bankruptcy, every deed of disposition under this act of lands in Ireland by any commissioner acting in the execution of any such fiat as aforesaid, and also every deed by which the protector of a settlement of lands in Ireland shall consent, shall be enrolled in his majesty's high court of chancery in Ireland within six calendar months after the execution thereof, and not in his majesty's high court of chancery in England.

Deeds relating to the lands of bankrupts in Ireland to be enrolled in the court of chancery there.

LXXI. And be it further enacted, that lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, except copy of court-roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of the lands to be sold as aforesaid, being held by copy of court-roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except

The previous clauses, with certain variations, to apply to lands of any tenure to be sold where the purchase money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in like manner.

that in every case where under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate, and, except in case of bankruptcy, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this act unless enrolled in his majesty's high court of chancery within six calendar months after the execution thereof; and in every case of bankruptcy the disposition of such leasehold lands or money shall be made by the commissioner, and completed by enrolment in the same manner as hereinbefore required in regard to lands not held by copy of court-roll.

Lands of any tenure in Ireland to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and money under the control of a court of equity in Ireland, subject to be invested in like manner, to be subject to this act in cases of bankruptcy.

LXXII. And be it further enacted, that so far as regards any person adjudged a bankrupt under any such fiat as aforesaid, the provisions of the clause lastly hereinbefore contained shall, for the benefit of the creditors of the bankrupt, apply to lands in Ireland to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any court of equity in Ireland, or of or to which any individuals as trustees may be possessed or entitled in Ireland, and which shall be subject to be invested in the purchase of lands to be settled, so that the bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this act had throughout extended to Ireland: provided always, that every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to lands in Ireland to be so sold as aforesaid, shall be enrolled in his majesty's high court of chancery in Ireland within six calendar months after the execution thereof; but every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to money subject to be invested in the purchase of lands to be so settled as aforesaid, shall be enrolled in his majesty's high court of chancery in England within six calendar months after the execution thereof, and not in his majesty's high court of chancery in Ireland: saving always the rights of the king's most excellent majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland to be sold.

As to deeds being acknowledged before enrolment.

LXXIII. And be it further enacted, that any rule or practice requiring deeds to be acknowledged before enrolment shall not apply to any deed by this act required to be enrolled in his majesty's high court of chancery in England or Ireland.

17 & 18 VICT. c. 36.

An Act for preventing Frauds upon Creditors by secret Bill of Sale of personal Chattels. [10th July, 1854.]

WHEREAS frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors: for remedy whereof, be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Bills of sale to be void, unless the same or a copy thereof be filed

I. Every bill of sale of personal chattels made, after the passing of this act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice,

and either immediately after the making of such bill of sale or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the court of queen's bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be. [*Page 425 et seq.*]

within twenty-one days, in like manner as warrants of attorney.

II. If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this act. [*Page 425 et seq.*]

Defeasance or condition of every bill of sale to be written on the same paper or parchment.

III. The said officer of the said court of queen's bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule to this act, which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of sixpence and no more; and that, in addition to the last-mentioned book, the said officer of the said court of queen's bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the

Officer of court to keep a book containing particulars of each bill of sale.

name, addition and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of one shilling. [Page 425 *et seq.*]

Officer entitled to a fee of 1s. for filing bill of sale, and to account for the same.

IV. The said officer shall be entitled to receive for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling and no more; and such officer shall render a like account to the commissioners of her majesty's treasury, and the said commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of the fees received by him, as is provided by the seventy-fifth chapter of the statute passed in the thirteenth and fourteenth years of the reign of her present majesty with respect to the officers of the court of common pleas therein mentioned. [Page 425 *et seq.*]

Office copies or extracts to be given on paying as for copies of judgments.

V. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said court of queen's bench. [Page 425 *et seq.*]

Satisfaction may be entered.

VI. It shall be lawful for any judge of the said court of queen's bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged. [Page 425 *et seq.*]

Interpretation of terms.

VII. In construing this act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; India warrants; warehouse keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, fixtures and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person. [Page 425 *et seq.*]

Extent of act.

VIII. This act shall not extend to Scotland or Ireland.

SCHEDULE.

Name, &c. of the person making or giving the bill of sale, or of the person divested of property.	Name, &c. of the person to whom made or given.	Whether bill of sale, assignment, transfer, or what other assurance, and whether absolute or conditional, and number.	Date of Execution.	Date of Filing.	Sum for which made or given.	When and how payable.

17 & 18 VICT. c. 119.

An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts.
[11th August, 1854.]

WHEREAS by reason of a diminution of the business of the court of bankruptcy vacancies have not been filled up in the offices of commissioners for the Birmingham and Bristol districts respectively, and of a registrar for the Bristol district, and in the present state of the business of the court it is not necessary that the same should be filled up: And whereas the lord chancellor ought to be empowered, in manner hereinafter mentioned, to regulate the amount of the establishment of the court of bankruptcy on the occurrence of future vacancies, in proportion to the amount of the business of the court for the time being, as far as circumstances will permit: And whereas, in some other particulars, the laws relating to bankrupts and to the court of bankruptcy require amendment: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. The vacancies now existing in the offices of commissioners of the court of bankruptcy for the Birmingham and the Bristol districts respectively, and of registrar for the Bristol district, shall not, nor shall any of them, be filled up unless and until the lord chancellor shall, by order, declare that, having regard to the state of the business of the court, he is of opinion that the said vacancies, or such one or more of them as shall be mentioned in the order, ought to be then filled up; and thereupon the said vacancies, or such one or more of them as aforesaid, may be filled up, as if this act had not been passed.

Present vacancies not to be filled up except upon special order of lord chancellor.
[Superseded. Act of 1861, sect. 18.]

II. Upon any future vacancy in the office of commissioner, by reason whereof there shall be one commissioner only acting in the Birmingham, Bristol, Leeds, Liverpool or Manchester district, and upon any future vacancy in the office of registrar for any of the same districts, the lord chancellor may, if, having regard to the then state of the business of the court, he shall so think fit, by order declare that such one or more of the vacancies aforesaid as shall be mentioned in the order shall not be filled up until further order, and thereupon the same shall not be filled up accordingly, unless and until the lord chancellor shall, by order, declare that, having regard to the then state of the business of the court, he is of opinion that any such vacancy as aforesaid ought to be then filled up, and thereupon the same may be filled up, as if this act had not been passed or such first-mentioned order had not been made.

Lord chancellor may declare future vacancies not to be filled up, except upon special order.
[Superseded. Act of 1861, sect. 18.]

III. And whereas by section nine of an act passed in the session of parliament holden in the first and second years of king William the fourth, chapter

Certain provisions of 1 & 2 Will. 4, c. 56, s. 9, re-

pealed, and registrars may be removed upon certificate of the lords justices.

[*Repealed. See act of 1861, sect. 8.*]

Power to appoint a person to act as registrar temporarily.

Remuneration of a person appointed to act under last preceding section.

Power to appoint substitute in illness or unavoidable absence of commissioner or registrar.
[*Act of 1849, sects. 19, 27.*]

Power to appoint substitute in reasonable absence of country commissioner or registrar.
[*Act of 1849, sects. 19, 27.*]

Substitute to have like authority, &c.

Appointments of messengers and ushers.

Sect. 76 of 5 & 6 Vict. c. 122, and sect. 49 of 7 & 8 Vict. c. 96, repealed, and salaries of officers to commence from appointment.
[*See act of 1849, sect. 56; act of 1861, sect. 29.*]

fifty-six, it is enacted, that it shall be lawful for his majesty, his heirs and successors, to remove any of the registrars and deputy registrars of the court of bankruptcy upon a certificate from the court of review, or one of the subdivision courts, of some sufficient reason to be named therein for such removal: now be it enacted as follows:

The said enactment shall be repealed; and it shall be lawful for her majesty, her heirs and successors, to remove the chief registrar or any of the registrars for the time being of the said court, acting either in London or in the country, upon a certificate from the lords justices for the time being of the court of appeal in chancery, of some sufficient reason to be named therein for such removal.

IV. Where, upon any vacancy in the office of registrar for London or a country district, it shall seem to the lord chancellor that it is necessary that some person should be then appointed to attend upon and assist a commissioner there acting, but that it is not expedient that a permanent appointment to the office of registrar there should be then made, the lord chancellor may appoint a fit person to act as registrar in and for London or the country district, as the case may require, and in that capacity to attend upon and assist a commissioner there acting, until further order.

V. Every person appointed to act under the last preceding section may receive from time to time, out of the monies for the time being standing to the credit of the chief registrar's account, such sum or sums by way of remuneration for his services in the period during which he shall act, not exceeding in the whole the amount to which he would have been entitled as salary for the same period under a permanent appointment as registrar to act in London or in a country district, as the case may be, together with such further sum (if any) for his necessary and proper travelling expenses, as the lord chancellor may from time to time order.

VI. Where a commissioner or registrar, acting either in London or in a country district, is temporarily hindered from discharging his duty by illness or unavoidable absence, the lord chancellor may, if he shall so think fit, appoint a fit person, who in the case of a commissioner shall be serjeant or barrister-at-law of at the least seven years' standing at the bar, to act in the stead of such commissioner or registrar as aforesaid, during his illness or unavoidable absence.

VII. Where a commissioner or registrar acting in a country district is absent for any reasonable cause, the lord chancellor may, if he shall so think fit, from time to time appoint a fit person, who in the case of a commissioner shall be a serjeant or barrister-at-law of at the least seven years' standing at the bar, to act in the stead of such commissioner or registrar as aforesaid, during such period or periods as shall not exceed in the whole the period of two calendar months in any one period of twelve consecutive calendar months.

VIII. Every serjeant, barrister or other person who shall under this act act in the stead of a commissioner or registrar, or in succession to a registrar, but without a permanent appointment as registrar, may and shall, while his appointment remains in force, have, discharge and execute all the jurisdiction, rights, powers, duties and authorities belonging to the office of the commissioner or registrar in whose stead or in succession to whom he shall for the time being act, with full validity and effect to all intents and purposes.

IX. No vacancy in the office of messenger or of usher shall be hereafter filled up without the sanction of the lord chancellor first obtained.

X. And whereas by section seventy-six of an act passed in the session of parliament holden in the fifth and sixth years of her majesty, chapter one hundred and twenty-two, it is enacted, that a succeeding judge, commissioner, registrar and deputy registrar respectively shall be paid such proportionate part of their respective salaries as shall be accruing or shall accrue from the day of the resignation, death or removal from office of the preceding judge, commissioner, registrar or deputy registrar respectively; and by section forty-nine of an act passed in the session of parliament holden in the seventh and eighth years of her majesty, chapter ninety-six, it is enacted, that the successor of any registrar or deputy registrar dying, resigning or being removed shall be entitled to receive such portion of his salary as shall be accruing or shall accrue from the day of such death, resignation or removal: now be it enacted as follows:

The said enactments shall be repealed; and the salaries of all commissioners and other officers of the court of bankruptcy to be hereafter appointed shall commence from the respective times when they shall respectively be so appointed, and not from the times when the respective vacancies shall have occurred.

XI. The lord chancellor shall, within six calendar months after the passing of this act, with the advice and assistance of the said lords justices and of any two or more of the commissioners, by order, direct according to what scale or rate, and in what manner, and with reference to what considerations, the remuneration of an official assignee for his services in respect of a bankrupt's estate shall be calculated and allowed; and as from the day on which such order as aforesaid shall take effect, the section of "The Bankrupt Law Consolidation Act, 1849," numbered forty-four, shall be repealed, and thenceforth the court shall not order or allow any sum to be paid out of a bankrupt's estate to the official assignee thereof, as a remuneration for his services, otherwise than in pursuance of and in accordance with the provisions and directions of such order as aforesaid, or any order amending or substituted for the same; and the lord chancellor may from time to time thereafter, with the advice and assistance aforesaid, by order, regulate such remuneration as aforesaid; and the provisions and directions respecting such remuneration as aforesaid contained in the general order of the nineteenth day of October, one thousand eight hundred and fifty-two, numbered CXXX., shall remain in force and be observed until the same shall be abrogated or varied by any order to be made under this act.

Remuneration of
official assignees.
[Repealed.]

XII. The lord chancellor may, with the advice and assistance aforesaid, from time to time by order vary or abolish the fees by "The Bankrupt Law Consolidation Act, 1849," made payable by stamps, or any of them, or other the fees for the time being payable in relation to any of the proceedings in matters of bankruptcy or arrangement in the court of bankruptcy or the court of appeal in chancery, and, if and when it shall seem necessary or expedient, fix and impose upon or in relation to such proceedings as aforesaid, or any of them, other fees, or fees of an altered amount, but not of an amount higher than that by the last-mentioned act prescribed, as far as regards any fee or stamp duty thereby expressly made payable in respect of any document therein specified; and the provisions of the same act respecting stamps are hereby extended and applied to and in the case of such stamps as may be required by any order to be made under this act.

Fees may be
altered by order
of lord chancellor.
[Repealed.]

XIII. The lord chancellor may, with the advice and assistance aforesaid, if it shall to him seem expedient, abolish such per-centage as is by "The Bankrupt Law Consolidation Act, 1849" (section LIV.) made payable to the chief registrar's account, or reduce the lowest rate thereof below one eighth of a pound per centum, and again re-impose the said per-centage, and from time to time regulate and vary the same, but so that the highest rate thereof shall not ever exceed the highest rate made payable by the said act.

Per-centage paid
to chief regis-
trar's account may
be abolished or
varied by order.
[Repealed.]

XIV. The lord chancellor may, with the advice and assistance aforesaid, from time to time by order fix a maximum sum to be paid in any matter of bankruptcy or arrangement in respect of the fees, stamp duties, per-centages or other charges for the time being payable to or in aid of the fund standing to the credit of the chief registrar's account, and raise or lower the same as may seem expedient; and when in any matter the total sum paid in respect of such fees, stamp duties, per-centages, or other charges as aforesaid, shall amount to the maximum sum for the time being fixed (which shall be ascertained and certified in such manner and by such person as the lord chancellor, with the advice and assistance aforesaid, may by order direct), then and in that case there shall not be any further or other fee, stamp duty, per-centage or charge whatsoever paid or payable in relation to the same matter, or any of the proceedings taken or to be taken therein, to or in aid of the fund standing to the chief registrar's account.

Power to fix
maximum pay-
able for fees.
[Repealed.]

XV. The section of "The Bankrupt Law Consolidation Act, 1849," numbered VIII., is hereby repealed, but not so as to invalidate any rule or order already made thereunder; and the lord chancellor may, with the advice and assistance aforesaid, from time to time by order vary or abrogate all or any of the rules and orders already made thereunder, or under any other authority, and now in force,

Power to make
general orders.
[Repealed.]

in relation to matters of bankruptcy or arrangement, and may from time to time make and alter or revoke such orders as may to him seem expedient for the better execution of the last-mentioned act and this act, or either of them, or any other act relating to bankruptcy, and for the regulation of the practice in matters of bankruptcy and arrangement, and the form and mode of proceeding therein before and by the court of bankruptcy, and for the regulation of the duties of the several officers of the court of bankruptcy, and the fees, costs, charges and allowances, as well of solicitors and of messengers and ushers, as also of auctioneers, appraisers, brokers, valuers and accountants employed by assignees, messengers or bankrupts, and for the taxation thereof respectively.

XVI. Every declaration of insolvency to be filed on or after the first day of September, one thousand eight hundred and fifty-four, for the purposes of "The Bankrupt Law Consolidation Act, 1849," under the authority of that act as altered by the act of the session of parliament holden in the fifteenth and sixteenth years of the reign of her majesty, chapter seventy-seven, shall, in lieu of being in every case filed in the office of the chief registrar, be filed in the court within the district whereof the trader filing the same shall have resided or carried on business for six calendar months next immediately preceding the time of the filing thereof; and the same shall be filed, in the case of the London district, in the office of the chief registrar, and in the case of the country districts with the respective registrars thereof.

XVII. The filing of a declaration of insolvency with the registrar of a country district shall have the same effect to all intents and purposes as the filing thereof in the office of the chief registrar would now have.

XVIII. The several registrars acting in the country shall transmit by post copies of all declarations of insolvency filed with them, immediately on the filing thereof respectively, to the chief registrar, who shall immediately on the receipt thereof respectively cause the same to be entered in a proper book to be kept by him for that purpose.

XIX. A copy of a declaration of insolvency purporting to be certified by a registrar of a country district as a true copy of a declaration filed in the court for that district shall be received as evidence of such declaration as aforesaid having been filed.

XX. The section of "The Bankrupt Law Consolidation Act, 1849," numbered XCIII., is hereby repealed as from the first day of September, one thousand eight hundred and fifty-four; and on and after that day any trader liable to become bankrupt may petition for adjudication of bankruptcy against himself, but unless he shall forthwith after filing his petition, and before adjudication of bankruptcy thereunder, make it appear to the satisfaction of the court that his available estate is sufficient to produce the sum of one hundred and fifty pounds at the least, his petition shall be dismissed, and no further petition shall be filed by him in the same district without the leave of the court first obtained, and the adjudication on any further petition shall be subject to the like condition as aforesaid as to his available estate.

XXI. The form of petition for adjudication of bankruptcy presented by a trader himself which is specified in the schedule (O.) to the last-mentioned act annexed shall, on and after the first day of September, one thousand eight hundred and fifty-four, be altered by the words "produce the sum of one hundred and fifty pounds at the least" being inserted therein, in lieu of the words "pay his creditors at least five shillings in the pound."

XXII. Proof by a trader petitioning as aforesaid of the sufficiency of his available estate to the extent required by this act shall have the same force and effect, to all intents, and for all the purposes of "The Bankrupt Law Consolidation Act, 1849," as proof by him of the sufficiency of his available estate to the extent required by that act would now have for the same purposes.

XXIII. After the appointment of an official assignee to act in any bankruptcy, and before the choice of assignees by the creditors, the messenger shall follow the instructions of the official assignee, subject to the directions and control of the court, with respect to the taking possession of any part of the bankrupt's estate or effects of which the messenger shall not have then already taken possession, and the keeping possession of any part thereof of which he shall then already have taken or shall at any time thereafter take possession.

Where declarations of insolvency to be filed.
[See act of 1861, sect. 72. See also same act, sect. 86. See also act of 1849, sects. 70, repealed, and 238 in force.]

Filing in country district court effectual.
[See margin last foregoing section.]

Copies to be sent to chief registrar.
[See margin, sect. 16.]

Copy certified by country registrar to be evidence.
[See margin, sect. 16.]

Trader petitioning to show 150*l.* assets.
[Repealed. See act of 1861, sect. 86.]

Form of petition of trader.
[Repealed. See G. O., 12th Oct. 1861, sched. 2.]

Proof of assets to the amount of 150*l.* to be sufficient.
[Repealed.]

Messenger to follow instructions of official assignee.

XXIV. The section of "The Bankrupt Law Consolidation Act, 1849," numbered CCXXXIII., limiting the time within which a person adjudged bankrupt may dispute the adjudication, shall, in the case of every person who shall be adjudged bankrupt on or after the first day of September, one thousand eight hundred and fifty-four, be construed and acted upon for all purposes whatsoever as if the words "two calendar months" were therein inserted, in lieu of the words "twenty-one days."

Extension of time for disputing adjudication.

[Act of 1849, sect. 233, amended.]

XXV. Every person who shall be adjudged bankrupt on or after the first day of September, one thousand eight hundred and fifty-four, shall be entitled to retain, for the use of himself and his family, under the name of excepted articles, such articles of household furniture, and tools, implements of trade and other like necessities as he shall specify and select, not exceeding in the whole the value of twenty pounds; and such excepted articles shall not be subject to be sold or disposed of in the bankruptcy, or to be taken in execution at the suit of any creditor entitled to prove under the bankruptcy; and in all cases there shall be filed with the proceedings in the court an inventory of such excepted articles, with a valuation of the same respectively, with a certificate signed by the appraiser or other person making such valuation attesting the truth thereof, and stating when and where such articles were seen and valued; and the reasonable expenses and charge of and for such valuation, when taxed, shall be paid by the official assignee out of the proceeds of the estate of the bankrupt, under the order of the commissioner.

Excepted articles to be allowed to a bankrupt.

[Repealed.]

XXVI. Except where the court shall otherwise order, an inventory and valuation of the remainder of the bankrupt's household furniture, tools and implements of trade shall be made and delivered to the official assignee; and where the bankrupt shall, by writing under his hand, request the assignees not to dispose of the same, such household furniture, tools or implements of trade shall not be disposed of by the assignees without previous order of the commissioner; and the commissioner may, upon the application of the bankrupt, postpone the removal and sale of the same for such time as the commissioner, in the exercise of his discretion, shall think fit, having regard to the probable value of the other property of the bankrupt, and he may permit and suffer the same to remain in the use and occupation of the bankrupt, upon such terms and conditions and with such security as to the commissioner may seem proper, so as to protect the same from being made liable to or sold for the payment of any rent, rates or taxes which might become due thereafter for or on account of any house or premises wherein such property may be placed, and from being made liable to be sold for the payment of any debt, claim or demand whatsoever by reason of being in the possession and occupation of the bankrupt; and the commissioner may, at any time when he shall think it necessary so to do, order the same to be taken by the messenger or assignee, and to be sold for the benefit of the creditors.

An inventory and valuation of the remainder of the bankrupt's household furniture, &c. to be made, which shall not be sold without the order of a commissioner.

[Repealed.]

XXVII. If the other estate and effects of the bankrupt shall in the due administration thereof pay to the creditors such an amount of dividend as shall entitle the bankrupt to an allowance in money, and the household furniture, tools and implements of trade so contained in the last-mentioned inventory and valuation shall not have been sold, the bankrupt shall accept the same at the valuation so originally put upon the same, or a sufficient portion thereof, to be selected by him, with the approbation of the assignees, as and for his allowance instead of money; and such articles of household furniture, tools and implements of trade so accepted shall be delivered to him, and shall thereupon, without any deed of assignment, revert in the bankrupt as his own property, and the official assignee shall sell for the benefit of the creditors such portions of such articles as the bankrupt shall not be entitled to retain, and such deduction may be made from his allowance for any diminution in value in such articles occasioned by his having continued to use them since the bankruptcy as the commissioner may think reasonable (to be either paid by the bankrupt in money or the amount thereof in value retained in goods).

If the bankrupt shall be entitled to any allowance, his household furniture, &c. to be taken in lieu of money.

[Repealed.]

XXVIII. This act shall be construed, together with "The Bankrupt Law Consolidation Act, 1849," as one act, and may be cited as "The Bankruptcy Act, 1854."

Construction. Short title.

24 & 25 VICT. C. 134.

An Act to amend the Law relating to Bankruptcy and Insolvency in England.
[6th August, 1861.]

WHEREAS it is expedient to amend the laws relating to bankruptcy and insolvency in England: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

As to the court of bankruptcy and the commissioners thereof, their powers and jurisdiction:

As to the powers and jurisdiction of the court of bankruptcy.

Present and future commissioners of the court in London.
[Vice act of 1849, sect. 7; see also post, sect. 18, and act of 1854, sects. 1, 2.]

Jurisdiction of county courts under this act.

Power to transfer jurisdiction, &c., of commissioners to county courts in case of vacancies.

Power to create additional county courts, and to invest the judges thereof with jurisdiction in bankruptcy, and to make new arrangement of districts.
[See act of 1849, sect. 9.]

Appointment, qualifications, and jurisdiction of judges of such courts.

Oath to be taken by county court judges before

1. The court of bankruptcy shall have and exercise, for the purposes of this act, all the powers and authorities of the superior courts of law and equity, and all the jurisdiction, powers and authorities now possessed by the court for the relief of insolvent debtors in England.

2. The present commissioners of the court of bankruptcy shall continue to be commissioners of the court. Upon any vacancy in the office of commissioner of the court of bankruptcy in London, such vacancy shall not be filled up until the number of commissioners of the court of bankruptcy in London shall, by reason of such vacancy, be reduced to less than three, whereupon it shall be lawful for her majesty, by commission under the great seal of the united kingdom, to appoint a person, being a serjeant-at-law, or barrister-at-law, of not less than twelve years' standing at the bar in England, to fill such vacancy.

3. The judge of every county court (except of the metropolitan county courts) shall have and exercise within his respective district the like jurisdiction, powers and authorities, and perform the same duties for and in respect of all matters and things coming before such county court by virtue of this act, as are vested in the commissioners of the district courts of bankruptcy.

4. If upon any vacancy in the office of commissioner of any country district court there shall no longer be a commissioner for such district, her majesty shall have power, by order in council, to transfer all the jurisdiction, powers and authorities held by the commissioner to the judges of the county courts, or any of them, exercising jurisdiction within such district or any part thereof, and the lord chancellor shall have power and authority, by order, from time to time to provide in all respects for the exercise of jurisdiction in bankruptcy by such county court judges or judge, and for the continuance of the exercise of their respective duties in the whole or any part of the district by the official assignees, registrar and other officers attached to the court of the commissioner making such vacancy.

5. In case it shall on any occasion appear to her majesty in council to be expedient to establish an additional county court or courts within any one or more of the country districts, and to invest the judge or judges thereof with the jurisdiction, powers and authorities of a commissioner in bankruptcy within the district or districts that may be assigned to such court or courts, it shall be lawful for her majesty, by order in council, so to do, and also to make a new arrangement of the districts of the bankruptcy and county courts respectively, so as to assign a convenient district or districts to such new court or courts, and to give from time to time all necessary directions for the establishment thereof, and such order shall be laid before parliament, and shall not come into operation until three months afterwards.

6. The judge of any such new court shall be appointed by the lord chancellor, and shall be either a serjeant-at-law or a barrister-at-law, who shall be of seven years' standing at the bar in England, or who shall have practised as a barrister and special pleader for at least seven years; and every such judge, in addition to the jurisdiction of a county court judge, shall have and exercise within the district assigned to him all the jurisdiction, powers and authorities of the commissioners of the country district courts of bankruptcy.

7. Every judge of a county court shall, before acting in bankruptcy, take at any quarter sessions the following oath:

'I, A. B., do solemnly and sincerely promise and swear, that I will duly and

'faithfully, and to the best of my skill and power, execute the office of county court judge acting in bankruptcy. So help me God.'

And such oath shall be recorded in the court of the judge taking the same.

As to the officers of the court:

8. The persons now discharging the duties of chief registrar, registrars, taxing master and official assignees of the court of bankruptcy in London, and in the several district courts of bankruptcy, shall retain and hold office during good behaviour, subject to dismissal by the lord chancellor, by order, for some sufficient reason to be set forth in such order. Upon any vacancy in the office of registrar, such vacancy shall be filled up by the lord chancellor.

Chief registrar, &c. to hold office during good behaviour, and vacancies to be filled up by lord chancellor.
[Vice 17 & 18 Vict. c. 119, s. 3, repealed]

Duties partly defined, G. O., 19th Oct. 1852, rr. 33—40, 43—45, 48—52, 60—62, 65—67, 100, 102, 103, 105, 110, 119—162; G. O., 12th Oct. 1861, rr. 12—16, 18, 27, 28, 33; as to temporary appointments, 17 & 18 Vict. c. 119, ss. 4—7; see also act of 1849, sect. 30.

9. If the lord chancellor shall at any time, by order, declare that, having regard to the state of the business of the court of bankruptcy and the duties of the registrars, he is of opinion that additional registrars ought to be appointed, either in London or in any country district, it shall be lawful for the lord chancellor to appoint such additional registrars.

Power to appoint additional registrars.

10. The registrars of the several county courts exercising jurisdiction under this act shall discharge the duties of registrar and official assignee in all matters under this act within their several districts in such manner, and shall give such security in respect of such office of official assignee, and shall receive such remuneration (a) in respect of such services, as general orders shall direct; and all the enactments herein contained with respect to official assignees shall apply to the registrars of the county courts as to all matters under this act prosecuted therein.

As to duties of county court registrars.
[See post, sect. 52; G. O., 23rd Oct. 1861; C. C. O., 1st July, 1863, r. 11.]

(a) G. O., 19th Nov. 1861, r. 5; G. O., 29th May, 1862.

11. The high bailiffs of the several county courts exercising jurisdiction under this act shall discharge the duties of messenger in all matters of bankruptcy within their several districts in such manner, and shall give such security in respect of such duties, and shall receive such remuneration (a) in respect of such services, as general orders shall direct.

As to duties of high bailiffs of county courts.
[C. C. O., 1st July, 1863, rr. 8, 18, 23—26.]

(a) G. O., 19th Nov. 1861.

12. Upon the first vacancy in the office of accountant in bankruptcy the office shall be abolished, and the duties thereof shall thereafter be discharged by the chief registrar, and the several funds standing in the books of the bank of England to the credit of such accountant shall be transferred to such account or accounts in the name of the chief registrar, and in such manner as general orders shall direct.

Abolition of office of accountant in bankruptcy upon the first vacancy.

13. All bills of costs, charges, fees and disbursements of solicitors and attorneys in matters under this act before the court of appeal in chancery sitting in bankruptcy and the court in London, and such taxable bills as may be specially referred to the master by any district court or any county court, shall be taxed by the master, subject to the review of the court in London.

Taxing master.
[G. O., 19th Oct. 1852, rr. 48—51; see act of 1849, sect. 37, repealed; G. O., 12th Oct. 1861, r. 17.]

14. In every country district court, and in every county court exercising jurisdiction under this act, all bills of costs, charges, fees and disbursements aforesaid shall (unless where such court shall otherwise direct) be taxed and settled by the registrar of such court, subject to appeal to the court of which he is registrar. It shall be lawful for the commissioner of any district court, or judge of any county court, to refer any such bills, or any question thereon, to the taxing master in London.

Registrar in country districts to be taxing officers.
[C. C. O., 1st July, 1863, r. 68.]

15. All charges, fees and disbursements of any auctioneer, appraiser, broker, valuer or accountant, or any other person, not being an attorney or solicitor, in any matter under this act or any other act in force relating to bankrupts, shall be settled by the master, except such charges, fees or disbursements as shall be incurred in any district court or county court, and in such cases shall be settled by the registrars of the court in which they arise, in such manner as general orders shall direct, and subject to the review of the court; and the amount of the bills so settled, and no more, shall be recoverable.

As to the settlement of charges of auctioneers, appraisers, valuers and accountants.
[See G. O., 19th May, 1855; G. O., 19th Nov. 1861; G. O., 22nd May, 1862; C. C. O., 1st July, 1863, r. 68.]

16. Upon any vacancy in the office of official assignee of the court in London the same shall not be filled up unless the number of official assignees in the

Reduction in the number of official assignees.

London district shall by reason of such vacancy be reduced to less than five. Any vacancy in the office of official assignee in a country district shall not be filled up if there be another official assignee within such district.

Messengers.

[See act of 1849, sect. 46, repealed; G. O., 12th Oct. 1861, rr. 12—16.]

17. The persons now discharging the duty of messenger in the court of bankruptcy in London, and in the several district courts of bankruptcy in the country, shall continue to act as such messengers, in such manner, and subject to such regulations, and shall give such security, as general orders shall direct, and shall be subject to dismissal by the lord chancellor by order, for some sufficient reason to be set forth in such order. Upon any vacancy in the said office, such office shall not be filled up until the number of messengers in the court in London shall have been reduced to two, and in any district court of bankruptcy in the country to one. Any vacancy thereafter occurring may, if necessary, be filled up by the lord chancellor by the appointment of some fit person.

As to filling up vacancies:

Vacancies need not be filled up.

[Superseding act of 1854, sects. 1, 2; see also ante, sect. 2.]

18. Upon any future vacancy in the office of commissioner or registrar (other than of chief registrar), or in any other office in the court of bankruptcy, the lord chancellor may, if, having regard to the then state of the business of the court, he shall so think fit, by order declare that such vacancy shall not be filled up until further order, and thereupon the same shall not be filled up, unless and until the lord chancellor shall by order declare that, having regard to the then state of business of the court, he is of opinion that such vacancy ought to be then filled up, and thereupon the same may be filled up as if such first-mentioned order had not been made.

As to the court for the relief of insolvent debtors in England:

Commissioners of insolvent debtors court released.

19. The jurisdiction, authorities and functions of the chief commissioner and commissioner of the court for relief of insolvent debtors in England shall cease and be discontinued, and the said chief commissioner and commissioner shall be released from their duties as such, subject nevertheless to the obligation of performing such duties and services as are hereinafter provided.

Insolvent jurisdiction of county courts discontinued.

20. The jurisdiction of the county courts in the relief of insolvent debtors shall cease; provided that all matters of insolvency pending at the commencement of this act in any of the said courts shall proceed and be completed therein as if this act had not been passed.

As to provisional assignees.

21. The person now exercising the office of provisional assignee of the court for the relief of insolvent debtors in England shall be an official assignee of the court of bankruptcy, and shall act as such official assignee in the court of London, and shall hold office during good behaviour, subject to dismissal by the lord chancellor by order, for some sufficient reason to be set forth in such order, and he shall perform the same duties, and receive the same salary, remuneration and allowances, as the other official assignees.

As to duties of other officers of the insolvent debtors court.

22. The persons now discharging the duties of chief clerk, clerks and taxing officer of the court for the relief of insolvent debtors in England shall be transferred to, and shall act in such manner as general orders shall direct in, the London court. They shall hold office during good behaviour, subject to dismissal by the lord chancellor by order, for some sufficient reason to be set forth in such order. No vacancy in such offices shall be filled up. Provided that nothing herein contained shall be deemed to deprive any person now holding office in the insolvent debtors court of any benefit to which he may now be or may hereafter become entitled by virtue of the acts passed in the fourth and fifth years of king William the fourth, chapter twenty-four, and the fifth and sixth years of king William the fourth, chapter forty-two, relative to superannuation allowances; and service by any such persons in the court of bankruptcy shall for the purpose of the said acts be deemed to be equivalent to service in the insolvent debtors court.

Nothing to deprive officers of superannuation allowances under 4 & 5 Will. 4, c. 24, and 5 & 6 Will. 4, c. 42.

Chief clerk of court to make returns of pending business to lord chancellor.

23. The chief clerk of the court for the relief of insolvent debtors in England shall, on such day before the time appointed for the commencement of this act as the lord chancellor shall direct, make a return to the lord chancellor of all business then pending or remaining incomplete in such court; and the lord chancellor may, if he shall think fit, direct such unfinished matters to be proceeded with and completed before and by the commissioners of such court, who

for such purposes shall retain and exercise all the jurisdiction, powers and authorities now possessed by them respectively.

24. For the purpose of winding up as expeditiously and conveniently as may be all petitions, matters and things which shall have been presented to or be depending in the said court for the relief of insolvent debtors, or any of the county courts, by virtue of any act for the relief of insolvent debtors, it shall be lawful for the commissioners or judges of such courts respectively, at any time after the passing of this act, to summon, as they shall deem fit, all or any of the parties to such petitions, matters or things, or their solicitors, and thereupon to give such directions and make such orders as may be necessary for the purpose of settling and winding up the same, and to proceed for the purposes aforesaid in the absence of the parties or solicitors neglecting or refusing to attend such summons.

Power of courts to proceed summarily in winding up matters depending.

25. Every recognizance which may at the time of the passing of this act have been entered into by any person as surety to the provisional assignee of the court for the relief of insolvent debtors, with condition that the insolvent therein mentioned shall duly appear at the time and place therein mentioned, shall extend to bind the person who may have entered into the same, in case the insolvent debtor therein mentioned shall not at the time appointed in such recognizance duly appear before the court by which the petition or matter of such insolvent is heard in pursuance of this act, and on every adjourned hearing, or shall not abide by the final judgment of such court.

Recognizances of sureties entered into under 1 & 2 Vict. c. 110, for enforcing attendance of insolvents, extended.

26. All monies and government securities which shall at the commencement of this act stand in the bank of England to the credit of the account of the commissioners of the court for the relief of insolvent debtors in England, shall be carried by the bank of England, in such manner as general orders shall direct, to the account of the accountant in bankruptcy; and, subject to the orders of the court for the payment thereof of any dividend, or for the distribution of any part thereof, in the matter to which the same originally belonged, shall be applicable in like manner as at present, or in such manner as the lord chancellor shall by order direct, towards defraying the salaries of the clerks and other persons hereby transferred from the insolvent debtors court to the court of bankruptcy, and towards defraying the expenses of and incidental to the discharge of pauper prisoners hereinafter provided, and also for indemnifying the provisional assignee of the insolvent debtors court against all costs and expenses incurred or to be incurred by him in any suit, action or other proceeding.

Insolvency fund.

27. The records and proceedings of every kind in the insolvent debtors court shall be records and proceedings of the court of bankruptcy, and shall be kept in such manner as they now are, subject to alteration by any general orders.

Records of court of insolvency.

As to salaries:

28. The chief commissioner of the court for the relief of insolvent debtors shall continue entitled, subject as herein provided, to receive during his life the full amount of his salary as such chief commissioner, payable out of the same fund on the same days, and in the same manner in all respects as if this present act had not passed.

Chief commissioner's salary continued.

29. There shall be paid to the registrars and other officers of the court the several salaries set opposite to their respective titles in schedule (A.) to this act annexed, and such salaries shall be payable out of the chief registrar's account, and shall be paid quarterly (a), free and clear from all taxes and deductions whatsoever, except the tax on income, on the eleventh day of January, the eleventh day of April, the eleventh day of July and the eleventh day of October in every year, by equal portions; and when any person for the time being holding any of the said offices shall die, resign or be removed from the same, the executor or administrator of the person so dying, or the person so resigning or being removed, shall be entitled to receive such proportionate part of his salary as shall have accrued during the time that such person shall have executed his office since the last payment.

Salaries of officers of the court of bankruptcy.

[Superseding act of 1849, sect. 56.]

(a) Commencing from the date of the appointment, not from the vacancy, 17 & 18 Vict. c. 119, s. 10.

Salaries to present officers of insolvent debtors court.

30. The chief clerk, clerks, taxing officer and other officers of the court for the relief of the insolvent debtors in England shall, upon being in manner herein provided transferred to the court of bankruptcy, severally continue to receive the full amount of the salary, remuneration, allowances and compensations, which they respectively receive, as nearly as may be, out of the same funds and payable in the same manner in all respects as if this act had not been passed; and for such purpose the annual sums now payable out of monies voted by parliament for the use and purposes of the court for relief of insolvent debtors and the officers thereof shall be paid in future into the bank of England, to the credit of the chief registrar's account in bankruptcy.

Fees to be taken by official assignees.

[See G. O., 22nd Feb. 1862; also post, sect. 67.]

Salaries of official assignees.

31. The fees to be taken by official assignees in respect of the duties performed by them shall be defined by general orders. Each official assignee shall make a return half-yearly to the chief registrar, in such manner as general orders shall direct, of the amount of fees received by him during the six months preceding the date of such return. Each of the present official assignees in the London district shall receive an annual salary of twelve hundred pounds. Each of the present official assignees in the country districts shall receive an annual salary of one thousand pounds. Every future official assignee in the London district shall receive an annual salary of one thousand pounds. And every future official assignee in the country districts shall receive an annual salary of eight hundred pounds. All such salaries shall be paid quarterly out of the monies standing to the chief registrar's account, and shall be exclusive of such proper remuneration actually paid to necessary clerks, and of such reasonable office expenses as shall respectively be allowed by the court. The official assignees shall not be entitled to any further remuneration in respect of any duties performed by them.

Remuneration of messengers.

[G. O., 19th May, 1855; G. O., 12th Oct. 1861, rr. 14, 15; G. O., 19th Nov. 1861.]

Surplus fees to be paid over.

32. The messengers shall receive such remuneration by way of fees as general orders shall direct and allow; provided that the total net annual remuneration to be received by any messenger in the London district shall amount to but not exceed the sum of five hundred pounds, and of any messenger in the country districts the sum of four hundred pounds. Any surplus of such fees upon the aggregate of the receipts of each year, after deducting the aforesaid salaries, and reasonable payments by the messengers for assistance, to be allowed by the court, shall be paid over by the several messengers, in such manner and at such times as general orders shall direct, to the credit of the chief registrar's account.

As to retiring annuities, compensations and incidental expenses:

Retiring pensions to officers.

33. The lord chancellor may, on a petition presented to him for that purpose, order that an annuity be paid to any commissioner or registrar, or to the accountant in bankruptcy, or taxing master or other officer of the court of bankruptcy, not exceeding two-thirds of his salary, to be paid out of the chief registrar's account, when such person shall have served in such office for the full period of twenty years, and shall be above sixty-five years of age, or shall have been appointed to such office in or previous to the year one thousand eight hundred and thirty-two, and shall be desirous of retiring, or if such person shall, before the period of twenty years' service is completed, be afflicted with any permanent infirmity disabling him from the due execution of his office. The time during which such person shall have held office in the court for relief of insolvent debtors shall be reckoned as part of such service of twenty years.

Provision as to annuitants accepting other public offices.

34. If any person to whom an annuity shall be granted under this act shall be appointed to and accept any public office of an annual value less than the amount of such annuity, such person, during the time he may continue in such office, shall be entitled to receive only so much of his annuity as shall, together with the salary of such new office, be equal to such annuity. If the salary attached to such public office shall equal or exceed in amount such annuity, then during the time of his continuance in such office such annuity shall altogether cease.

Compensations.

35. The compensations now payable to the following holders of abolished offices,—

Patentee of bankrupts,
The former commissioners of bankrupt,

The clerk of the hanaper and other officers of the lord chancellor and the court of chancery, and the retiring annuities now respectively payable out of the funds standing to the credit of the chief registrar's account, shall continue to be paid out of the same funds; but the annual amount of the said compensations and retiring annuities shall be paid into the bank of England to the credit of the chief registrar's account, by the commissioners of the treasury, out of monies to be from year to year voted for that purpose by parliament.

36. The funds standing to the account intituled "the chief registrar's account" shall be subject to all such orders as have been heretofore duly made, or as shall from time to time be made by the lord chancellor for payments thereout in respect of the salaries of clerks and other persons employed in the various offices of the several courts of bankruptcy, and for stationery, coals and candles for the use of the same, and for rent and repairs of the buildings, and in respect of all expenses incidental to carrying this act into effect; and all accounts for such expenses shall be audited and allowed by the commissioner of the court in which they have been incurred before any order for payment shall be made.

Incidental expenses.
[Vice act of 1849, sects. 58, 59, repealed, and 63 still in force.]

As to fees and stamps:

37. The court fee heretofore payable in respect of public and private sittings in bankruptcy is abolished.

Court fee abolished.

38. The per-centage heretofore payable by the fifty-fourth section of "The Bankrupt Law Consolidation Act, 1849," to the chief registrar's account, on the gross produce of estates in the court of bankruptcy, is abolished.

Per-centage upon estates abolished.

39. General orders may from time to time direct what fees, other than those herein directed, shall be paid in respect of any matters of bankruptcy or proceedings under this act: Provided that all fees shall be received and taken by means of stamps having the word "bankruptcy" impressed or affixed thereon, in manner hereinafter provided.

General orders to direct what fees to be paid.

Fees to be received in stamps.

40. The fees by this act made payable, or any of them, may from time to time be varied or abolished by general orders; and other fees, but not of an amount higher than that by this act prescribed, may be fixed and imposed by such orders; and the provisions of this act respecting stamps are hereby extended and applied to such stamps as may be required by general orders.

Fees may be altered by general order.

41. Every document enumerated in the schedule (B.) to this act annexed shall, in lieu of all fees thereupon, be printed or written upon vellum, parchment or paper bearing the stamp duty set opposite to such documents respectively in such schedule, and having the word "bankruptcy" impressed on every such stamp: Provided that the commissioners of inland revenue, besides such impressed documents denoting fees, shall provide like stamps on adhesive paper; and all stamp duties and fees directed to be paid under this act may be paid by means of such stamps on adhesive paper affixed to documents requiring a stamp duty: where any such document shall consist of more than one sheet, only the first sheet thereof shall have such stamp impressed or affixed thereon.

Certain documents to be on stamped vellum, &c. in lieu of fees.

[Vice act of 1849, sect. 48, repealed; G. O., 12th Oct. 1861, r. 34; C. C. O., 1st July, 1863, r. 71.]

42. No document which by this act or by any general order is or shall be required to have a stamp impressed thereon shall be received or filed or be used in relation to any proceeding in the courts, or be of any validity for any purpose whatever, unless or until the same shall have the proper stamp impressed or affixed thereon: Provided always, that if at any time it shall appear that any document which ought to have had such stamp has, through mistake or inadvertence, been received or filed or used without having such stamp, the courts may order that such stamp shall be impressed or affixed thereon; and when a stamp shall have been so impressed or affixed on such document, such document and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed or affixed thereon in the first instance: Provided also, that nothing herein contained shall affect the provisions contained in the twenty-seventh section of the act of the session of parliament of the seventeenth and eighteenth years of the reign of her present majesty, chapter eighty-three, or the provisions of "The Common Law Procedure Act, 1854," and that every stamp on adhesive paper affixed to a document shall be deemed a stamp impressed thereon.

Documents not to be received without a stamp.

[Vice act of 1849, sect. 52, repealed. See G. O., 12th Oct. 1861, r. 34; C. C. O., 1st July, 1863, r. 71.]

Proviso where so received through mistake.

Officers, &c.
taking fees im-
properly.
[Vice act of 1849,
sect. 271.]

Officers of the
court may be dis-
missed for fraud
or wilful neglect
in relation to
stamps.

[Vice act of 1849,
sect. 8, repealed.]
Purposes for
which general
orders are to be
framed.

General orders in
county courts.

Alteration of
general orders.

All general orders
to be laid before
parliament.

[Vice act of 1849,
sect. 10, repealed.]
Sittings of the
court.

Lord chancellor
to regulate sit-
tings in vacation.

Evidence, how to
be taken.
[Vice act of 1849,
sect. 245; see as to

43. If any judge, commissioner, registrar, accountant, master, official assignee, clerk or any other officer of the courts of bankruptcy, or of any county court acting in matters under this act, shall, for anything done or pretended to be done under this act, or under colour of doing anything thereunder, fraudulently and wilfully demand or take, or appoint or allow any person whatsoever to take, for him or on his account, or for or on account of any person by him named, or in trust for him or for any other person by him named, any fee, emolument, gratuity, sum of money, or any thing of value whatsoever, other than is allowed by this act, such person, when convicted thereof, shall forfeit and pay the sum of five hundred pounds, and be rendered incapable and is hereby rendered incapable of holding any office or place under her majesty.

44. If any such judge, commissioner, officer or person shall fraudulently do, commit or connive at any fraudulent act or practice in relation to any stamp used or required to be used in any matter under this act, or to any fee or sum of money collected or which ought to be collected by means of any such stamp or otherwise, or shall be guilty of any fraudulent act, neglect or omission, whereby any fee which ought to be collected by means of such stamp or otherwise shall be lost or the payment thereof evaded, such judge, commissioner, officer or person so offending shall be liable to be dismissed from his office or employment.

As to general orders :

45. The lord chancellor shall, with the assistance of two commissioners, and subject to the provisions of this act, frame general orders for the following purposes :

For regulating the practice and procedure of the courts of bankruptcy, and the several forms of petitions, orders and other proceedings to be used in the said courts, in all matters under this act ;

For regulating the duties of the various officers of such courts ;

For regulating the fees payable and the charges and costs to be allowed with respect to all proceedings before such courts, and before the county courts acting in bankruptcy ;

For regulating the practice and procedure upon appeals ;

For regulating the filing, custody and inspection of records ;

And, generally, for carrying the provisions of this act into effect.

46. For regulating the practice and procedure of the county courts and the place and times of sitting thereof in matters under this act, general orders shall be framed in conformity with the provisions of this act, and subject to the sanction of the lord chancellor, by such judges of the said courts as the lord chancellor shall from time to time nominate for that purpose.

47. After such general orders shall have been so framed they or any of them may be rescinded or varied, and other general orders may be framed in manner aforesaid ; and all general orders so framed from time to time shall be laid before both houses of parliament within one month after the approval thereof by the lord chancellor, if parliament be then sitting, or if parliament be not then sitting, within one month from the commencement of the then next session of parliament.

As to the sittings of the court :

48. The London and district courts of bankruptcy shall sit for the despatch of business daily throughout the year, Sunday, Christmas day, Good Friday, Monday and Tuesday in Easter week, and days appointed for public fast or thanksgiving, excepted.

49. During the time appointed by order for vacations in the high court of chancery the lord chancellor shall have full power and authority to regulate the sittings of the court, and appoint the attendance of such commissioner or commissioners as shall appear necessary for the due administration of justice in the said court.

As to the practice and procedure of the court :

50. The several courts exercising jurisdiction under this act may, in all matters

within their respective jurisdictions, take the whole or any part of the evidence either *vivâ voce* on oath, or by interrogatories in writing, or upon affidavit, or by commission abroad. short-hand writer to preserve evidence, post, sects. 61, 62.]

51. The commissioners may sit at chambers for the despatch of such part of the business of their courts as can, without detriment to the public advantage arising from the discussion of questions in open court, be heard in chambers; and when sitting at chambers they shall have in all respects like power and jurisdiction as when sitting in court. Judges may sit at chambers. [See G. O., 12th Oct. 1861, r. 17.]

52. The registrars of the court of bankruptcy shall have power to make adjudication of bankruptcy, to receive the surrender of any bankrupt, to grant protection, to pass the last examination of any bankrupt in cases wherein the assignees and creditors do not oppose, to hold and preside at meetings of creditors, to audit and pass accounts of assignees, and to sit in chambers, and despatch there such part of the administrative business of the court, and such uncontested matters as shall be defined in general orders, or as the commissioner in any particular matter shall direct; but nothing herein contained shall empower a registrar to commit, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge. The registrar may adjourn any matter coming before him for the consideration of the commissioner. The lord chancellor may, by order, from time to time authorize the registrar of any county court to exercise any of the powers hereby given to the registrars of the court of bankruptcy. Registrars, their powers and jurisdiction. [See margin, ante, sect. 8.] Registrars to sit in chambers. [G. O., 12th Oct. 1861, r. 18.] County court registrars. [G. O., 23rd Oct. 1861; C. C. O., 1st July, 1863, r. 11.]

53. Any party shall, during the proceedings before a registrar, be at liberty to take the opinion of the commissioner upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the registrar in the shape of a short certificate to the commissioner, who shall sign the same, if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the commissioner, at chambers or in open court. Parties may take opinion of the commissioner. Certificates of registrars at chambers to be binding.

54. Parties and witnesses summoned before a registrar shall be bound to attend in pursuance of such summons, and shall be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpœna; and all persons wilfully and corruptly swearing or affirming falsely before a registrar shall be liable to all the penalties, punishments and consequences of perjury. Penalties upon parties and witnesses not attending, or wilfully swearing falsely, before registrar. [See act of 1849, sect. 254.]

55. If any person examined before a registrar shall refuse or decline to answer or to swear to or sign his examination when taken, the registrar shall refer the matter to the commissioner, who shall have power to order the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question, or to sign such examination. Persons refusing to answer may be ordered to pay costs.

56. In any bankruptcy or any other proceeding within the jurisdiction of the court the parties concerned or submitting to such jurisdiction may, at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the court, and the judgment of the court shall be final, unless it be agreed and stated in such special case that either party may appeal. Special case.

57. The parties may, if they think fit, agree that, upon the question or questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered or transferred by one of such parties to the other of them, either with or without costs. Payment of money by party on judgment being given.

58. The courts of bankruptcy may direct a registrar to attend at any place within the district of the court to which he is attached, for the purpose of holding any meeting of creditors, of receiving proof of debts, and generally for the prosecution of any bankruptcy or other proceeding under this act; and the travelling and incidental expenses of such registrar, and of any clerk or other officer attending him, incurred in so acting, shall be settled by such court, and paid out of the assets of the estate in respect of which such registrar has so acted, or if there be no such assets, or if the assets be insufficient, then out of the chief registrar's account; and such registrar so acting shall have and exercise all powers, except the power of commitment, vested in such court for the summoning Courts may direct registrar to hold meetings, &c. Expenses of such registrar, &c. Powers of registrar so acting.

and examination of persons or witnesses, and for requiring the production of books, papers and documents: Provided always, that all depositions and examinations of persons and witnesses taken before such registrar, and all acts done by him, shall be reduced to writing, and be signed by such registrar, and shall be annexed to and form part of the proceedings.

59. It shall be lawful for the judges of the court of appeal in chancery to direct any question of fact to be tried and determined before themselves by the verdict of a special or common jury. The judges of the said court of appeal in chancery may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and also may make any other orders which may be requisite for the purpose of such trial; and every such jury shall consist of persons possessing the like qualifications, and shall be struck, summoned and balloted for and called, in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts; and every jurymen so summoned shall be entitled to the same rights, and be subject to the same duties and liabilities, as if he had been duly summoned for the trial of a civil action in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights, as to challenge and otherwise, as if he were a party to a cause in any of the said superior courts; and at the trial the jury shall be sworn to try the said question of fact, and a true verdict to give thereon according to the evidence; and upon every such trial such court shall have the same powers, jurisdiction and authority as any judge of the superior courts of common law sitting at nisi prius.

60. It shall be lawful for the judges of the court of appeal in chancery respectively to direct one or more issue or issues to be tried in any court of common law, and either before a judge of assize in any county, or if required by circumstances, at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the court of chancery.

61. In order to facilitate the business of the courts of bankruptcy in taking examinations, or the evidence of parties examined vivâ voce, the court may, in any matter of bankruptcy or other proceeding within the jurisdiction of courts, direct the employment of a shorthand writer; and general orders shall direct under what regulations such shorthand writer shall be employed, and the amount of the remuneration to be allowed him, and the parties by whom such remuneration shall be paid.

62. Every shorthand writer so employed by the court shall in every case make in court the following declaration:

'I, A. B., do solemnly and sincerely declare, that I will faithfully and truly
'take down the questions and answers put to and given by persons to be
'examined in this matter, and will deliver true and faithful transcripts
'thereof, as the court shall direct.'

63. Every warrant issued by any court under this act shall be under the seal of the court, and the hand of the commissioner; and every summons shall be under the hand of the registrar, and under the seal of the court.

64. The courts shall cause to be sealed with the seal of the courts all such records, proceedings, documents and copies of the same as are by this act or shall be by general orders required to be so sealed, and such other records, proceedings, documents and copies of the same as the courts shall at any time direct.

65. No rule, order, warrant or other proceeding or document required by this act to be in a form given in the schedules to this act, or to be given by any general order, shall be invalidated by reason of any want of form or omission therein, if such want of form or omission shall not in the opinion of the court before which the same shall be brought be calculated to mislead or prejudicially affect any party.

66. Every decision or order of the judge of any county court acting in bankruptcy under this act shall be subject to appeal to the court of appeal in chancery, in like manner and under the same rules and regulations as are now directed

Questions of fact may be tried by a jury.

[Vice act of 1849, sect. 15, repealed, sed quære necessary; see 14 & 15 Vict. c. 83, s. 7, unrepealed.]

Issues may be directed.

[Vice act of 1849, sect. 15, repealed, sed quære necessary; see 14 & 15 Vict. c. 83, s. 7, unrepealed.]

Appointment of short-hand writers.

[See ante, sect. 50; G. O., 12th Oct. 1861, r. 35; C. C. O., 1st July, 1863, r. 72.]

Declaration to be made by shorthand writer.

Sealing and signature of warrants.

[Vice act of 1849, sect. 24.]

Records and proceedings to be sealed.

[Vice act of 1849, sect. 25; G. O., 19th Oct. 1852, r. 42; C. C. O., 1st July, 1863, r. 6.]

Want of form, where not to invalidate proceedings.

Appeal from county courts.

[See act of 1849, sect. 12; G. O., 19th Oct. 1852, r. 29; G. O., 12th Oct. 1861, r. 32;

with respect to appeals from the London and district courts of bankruptcy to the said court of appeal, or as may hereafter be directed by general orders.

C. C. O., 1st July, 1863, rr. 65—67.]

67. The registrars, accountant in bankruptcy, master, official assignees and messengers of the court in London and of the district courts of bankruptcy, and the registrars of the county courts acting in bankruptcy, shall make to the chief registrar, in such manner and form as general orders shall direct (*a*), annual returns of the business of their respective offices, and from such returns the chief registrar shall frame a general return, judicial and financial, as to all matters within this act, and such general return shall be laid before parliament by the lord chancellor as early as may be after the completion thereof; and the returns to the chief registrar shall be kept by him of record, and shall be open to the inspection of persons desirous of inspecting the same, on payment of the fee for inspection of proceedings set forth in schedule (B.) to this act.

Returns to parliament.

(*a*) See G. O., 22nd Feb. 1862; also *ante*, sect. 31.

As to the buildings occupied for the purposes of the courts:

68. The building in Basinghall-street, in the city of London, called the court of bankruptcy, and the building in Portugal-street, Lincoln's-inn-fields, called the court for the relief of insolvent debtors in England, together with the pieces or parcels of ground on which the same are severally erected, shall vest in the commissioners of her majesty's works and public buildings, and shall be appropriated to such purposes as the lord chancellor shall direct.

Buildings.

[*Vice act of 1849, sects. 60—62.*]

As to the persons subject to this act:

69. All debtors, whether traders or not, shall be subject to the provisions of this act; but no debtor who is not a trader shall be adjudged bankrupt except in respect of some one of the acts of bankruptcy hereinafter described as applicable to a non-trader.

Abolition of distinction between trader and non-trader.

As to acts of bankruptcy:

70. If any person, not being a trader, shall, with intent to defeat or delay his creditors, depart this realm, or being out of this realm shall with such intent remain abroad, or shall with such intent make any fraudulent conveyance, gift, delivery or transfer of his real or personal estate, or any part thereof respectively, such person shall be deemed to have thereby committed an act of bankruptcy: Provided always, that before any adjudication in bankruptcy shall be made against the debtor under this section the following rules shall be observed:

Non-trader going, or remaining abroad, or making fraudulent conveyance, with intent to defeat or delay his creditors.

1. A copy of the petition for adjudication shall be served personally on the debtor, either within the jurisdiction, or in such place or country, or within such limits abroad, as the court shall, upon application for that purpose, direct:
2. Such copy petition shall have indorsed thereon a memorandum, in a form to be settled by a general order, specifying the time within which the debtor is to appear on such petition; and such time shall, when the service is to be made abroad, be the time which the court shall think reasonable, having regard to the place or country where the service is to be made:
3. In no case shall the time for appearance be less than thirty days after service:
4. If such personal service has not been effected, the court must be satisfied that every reasonable effort was made to effect the same, and that the attempts to serve such petition came to the knowledge of the debtor and were defeated by his conduct:
5. If at the expiration of the time limited for appearance the court shall on the hearing of such petition be satisfied that an act of bankruptcy has been committed within the meaning of this section, it may adjudge such debtor to be a bankrupt:

Rules to be observed before adjudication under this section.

[*Form, G. O., 12th Oct. 1861, r. 2.*]

Provided always, that no non-trader, who shall be abroad at the time of the passing of this act, shall be deemed to remain abroad with intent to defeat or delay his creditors until the expiration of six months after the passing of this act.

Proviso.

Trader or non-trader lying in prison, or escaping out of prison.

[Vice act of 1849, sect. 69, repealed; see post, sect. 101.]

71. If any debtor, whether a trader or not, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison, being a trader, for fourteen days, or, not being a trader, for two calendar months, or, having been arrested for any cause, shall lie in prison as aforesaid, after any detainer for debt lodged against him, and not discharged, every such debtor shall thereby be deemed to have committed an act of bankruptcy; or if any such debtor, having been arrested, committed or detained for debt, shall escape out of prison or custody, every such debtor shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment or detention: But no debtor shall be adjudged bankrupt on the ground of having lain in prison as aforesaid, unless having been summoned (a) he shall not offer such security for the debt or debts in respect of which he is imprisoned or detained, as the commissioner or registrar whose duty it would otherwise be to adjudicate shall deem reasonably sufficient.

(a) See additional forms, 6—9, 21.

Trader or non-trader filing a declaration that he is unable to meet his engagements.

[Vice act of 1849, sect. 70, repealed; see also act of 1849, sect. 238; 17 & 18 Vict. c. 119, ss. 16—19; see also post, sect. 86.]

72. If any debtor, whether a trader or not, shall file in the office of the chief registrar, or with the registrar of a district court of bankruptcy, or of a county court having jurisdiction in bankruptcy, a declaration in writing, in such form (a) as general orders shall direct, signed by such debtor, and attested by a registrar of the court, or by an attorney or solicitor, that he is unable to meet his engagements, every such debtor shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a petition for adjudication of bankruptcy shall be filed by or against him within two months from the filing of such declaration.

(a) G. O., 12th Oct. 1861, sched. 7.

Trader debtor suffering execution to be levied.

73. If any execution shall be levied by seizure and sale of any of the goods and chattels of any trader debtor, upon any judgment recovered in any action personal for the recovery of any debt or money demand exceeding fifty pounds, every such debtor shall be deemed to have committed an act of bankruptcy from the date of the seizure of such goods and chattels: Provided always, that, unless in the meantime a petition for adjudication of bankruptcy against the debtor be presented, the sheriff or other officer making the levy shall proceed with the execution, and shall at the end of seven days after the sale pay over the proceeds, or so much as ought to be paid, to the execution creditor, who shall be entitled thereto notwithstanding such act of bankruptcy, unless the debtor be adjudged a bankrupt within fourteen days from the day of the sale, in which case the money so received by the creditor shall be paid by him to the assignee under the bankruptcy, but the sheriff or other officer shall not incur any liability by reason of anything done by him as aforesaid: Provided also, that, in case of bankruptcy, the costs and expenses of such action and execution shall be retained and paid out of the proceeds of the sale, and the balance only, after such payment, be paid to the assignees.

Goods, &c. taken in execution to be sold by auction.

74. Wherever the goods and chattels of a debtor are sold under an execution upon any judgment recovered in any action or suit brought for the recovery of a debt, money demand or damages against any debtor, exceeding fifty pounds, such goods and chattels shall in all cases, unless the court shall otherwise direct, be sold by the sheriff by public auction, and not by bill of sale or private contract, and such sale shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

As to petition by or against trader or non-trader, followed by adjudication, in the foreign dominions of the crown.

[Vice act of 1849, sect. 75, repealed.]

75. The filing of a petition by or against a debtor, whether a trader or not, in any court having jurisdiction for the relief of insolvent debtors in insolvency or bankruptcy in any of her majesty's dominions, colonies or dependencies, and the adjudication of an act of insolvency or bankruptcy on such petition, shall, for the purposes of this act, be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such debtor at the time of filing such petition, or of the filing the petition on which the adjudication of an act of insolvency or of bankruptcy shall have been made; and any creditor or creditors

of such debtor whose debt or debts shall be of sufficient amount to enable him or them to petition for adjudication of bankruptcy under this act may, at any time within two months after notice of such adjudication shall have been given in the London Gazette, petition for adjudication of bankruptcy under this act against such debtor, and under such petition all such proceedings may be had and taken as are authorized and directed by this act.

As to an act of bankruptcy by nonpayment after judgment debtor summons, and the proceedings thereupon :

76. Every judgment creditor who is or shall be entitled to sue out against a debtor a writ of *capias ad satisfaciendum*, or to charge the debtor in execution, in respect of any debt (a) amounting to fifty pounds, exclusive of costs, shall be entitled, at the end of one week from the signing of judgment, to sue out against the debtor if a trader, or not being a trader at the end of one calendar month, and whether he be in custody or not, a summons, to be called a judgment debtor summons, requiring him to appear and be examined respecting his ability to satisfy the debt.

(a) But see *post*, sect. 90.

[Vice act of 1849, sects. 72, 73, repealed.]

Judgment debtor summons against traders and non-traders; who may sue them out, and when.

[G. O., 12th Oct. 1861, rr. 5—7, and scheds. 3, 4, 14, for forms.]

77. Where, after the commencement of this act, a decree or order of a court of equity, or an order in bankruptcy or insolvency or lunacy, directing the payment of money, is disobeyed by the debtor, the same having been duly served on him, and the person entitled to receive the money or interested in enforcing payment of it has obtained a peremptory order of the competent jurisdiction, fixing a day for payment, and the debtor does not, being a trader, within seven days, or, not being a trader, within two calendar months, after service on him of the peremptory order, or, such order having been duly served, within seven days after the day fixed by the peremptory order for payment (which shall last happen), pay the money, or secure, or tender or compound for it, to the satisfaction of the creditor, the creditor shall be entitled at the end of those seven days to sue out against the debtor a judgment debtor summons.

The like, in cases of disobedience to decree in equity, or order in bankruptcy, insolvency or lunacy.

[For form, see G. O., 12th Oct. 1861, sched. 3.]

78. The judgment debtor summons shall, unless the court shall in any case otherwise direct, issue according to the following rules :

Court out of which such summons shall issue.

Where the debtor is in England, then out of the court of bankruptcy for the district in which the debtor usually lives, or at the time of the issuing of the summons happens to be :

Where the debtor is not in England, then out of the court of bankruptcy for the district in which is the debtor's usual or last known place of abode in England.

79. Where the debtor is in England the summons shall be served personally, unless the court issuing the same shall in any case direct that service in some other manner shall be good service : Where the debtor is not in England, the court, upon such evidence as shall satisfy it that the service will be effectual to give notice to the debtor, may order service to be made in such manner and form as it shall deem fit, and shall appoint a time by such order for the appearance of the debtor.

Service of summons.

[G. O., 12th Oct. 1861, r. 8, and scheds. 8, 9.]

80. Where the debtor is in custody a duplicate of the summons shall be delivered to the sheriff or other person in whose custody he is, who shall bring him up according to the summons, at the cost of the summoning creditor.

Duplicate of summons.

81. If service of the summons be not effected, and the court is satisfied that the debtor is keeping out of the way to avoid service, it may order that one or more notices be inserted in the London Gazette and in one or more newspapers published in the district in which is the debtor's usual or last known place of abode, requiring him to appear on a day named, being not less than fourteen days after the publication of the first notice.

Where service cannot be effected, &c., court may order notice in London Gazette, &c. [G. O., 12th Oct. 1861, scheds. 10, 11.]

82. Upon the appearance of the debtor he may be examined on oath, by or on behalf of the creditor and by the court, respecting his ability to satisfy the debt, and for the discovery of property applicable in that behalf, and shall be bound to produce, on oath or otherwise, such books, papers and documents in his possession or power relating to property applicable or alleged to be applicable to the satisfaction of the debt, as the court shall think fit, and to sign his

Procedure upon appearance of debtor.

examination when reduced into writing; and any debtor refusing to be sworn, or who shall upon examination refuse or wilfully fail to discover fully and truly, to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and to produce all books, papers and documents in his possession or power relating thereto, shall be liable to be committed by the court as in the case of a bankrupt.

83. If, after service of such summons, or due notice thereof, as aforesaid, the debtor shall not pay the debt and costs, or secure or compound for the same to the satisfaction of the creditor, the court may, on the appearance of the debtor, or if he shall not appear, having no lawful impediment allowed by the court, adjudge him bankrupt, without the presentation of a petition for adjudication or other proceeding; and where the debtor has not appeared, notice of such adjudication shall be served upon him in like manner as herein provided with respect to service of the summons.

84. The debtor shall be allowed seven days from such notice, or such further time as the court shall think fit, for appearance to show cause against the adjudication; and if he appear within the time allowed, and show sufficient cause, the adjudication may be annulled; otherwise, at the end of the time allowed, or on the judgment of the court against the sufficiency of the cause shown, the adjudication shall become absolute, and notice thereof shall be forthwith given in the London Gazette; and the adjudication shall have relation back to the service of the summons, or the insertion of the first notice in the London Gazette, as the case may be; and the stamp duty payable upon the presentation of a petition for adjudication of bankruptcy shall be paid in respect of adjudication under this section or under the last preceding section by the official assignee or creditors' assignee, as the case may be, out of the first monies that shall be received under the estate of the bankrupt.

85. The provisions contained in section two hundred and sixty of "The Bankrupt Law Consolidation Act, 1849," relating to the committal of a person refusing to be sworn, or doing or omitting the other acts or things therein mentioned, shall apply to a debtor appearing on a judgment debtor summons.

As to petitions for adjudication of bankruptcy, and the proceedings thereupon:

86. Any debtor may petition for adjudication of bankruptcy against himself, and the filing of such petition shall be an act of bankruptcy, without any previous declaration of insolvency by such debtor.

G. O., 12th Oct. 1861, r. 11, and sched. 2; act of 1849, sched. N.; C. C. O., 1st July, 1863, rr. 12, 14; C. C. Forms, 2, 6. Vice act of 1849, sect. 93; see also *post*, sect. 99.

87. Proceedings to obtain adjudication of bankruptcy shall be by petition, on the oath of the petitioner (a). Every such petition shall be filed of record, and prosecuted as directed by this act; and from and after the filing of such petition, in the case of a debtor petitioning against himself, and from and after adjudication, in the case of a petition filed against the debtor who shall be adjudged bankrupt, the bankrupt personally and all his estate and effects, of what nature or kind soever, shall be subject to the law of bankruptcy.

G. O., 12th Oct. 1861, scheds. 1 and 2; act of 1849, sched. N.; C. C. forms, 2, 4. See act of 1849, sect. 89; G. O., 19th Oct. 1852, r. 21; C. C. O., 1st July, 1863, rr. 12—15.

(a) For form of affidavit, compare act of 1849, sched. N., and notes to G. O., 12th Oct. 1861, sched. 2.

88. Every petition for adjudication of bankruptcy, except as hereinafter provided, shall be filed and prosecuted in the court of bankruptcy within the district of which such debtor shall have resided or carried on business for the six months next immediately preceding the time of filing such petition, or for the longest period during such six months; but the court in London may order any such petition to be prosecuted in any district, with or without reference to the district in which the debtor shall have so resided or carried on business, or may consolidate the proceedings or any part thereof under two or more petitions for

Adjudication upon summons, and nonpayment for failure to secure or compound.

[G. O., 12th Oct. 1861, sched. 12.]

Time to show cause against adjudication.

[G. O., 12th Oct. 1861, sched. 13.]

Adjudication, when to become absolute.

[G. O., 12th Oct. 1861, sched. 13; G. O., 6th Nov. 1861, r. 2.]

Stamp duty thereupon.

Debtor refusing to conform may be committed.

Debtor may petition for adjudication against himself.

Proceedings to obtain adjudication of bankruptcy to be by petition upon oath.

Proceedings, &c. upon filing petition.

Where petition shall be filed and prosecuted.

[Vice act of 1849, sect. 90, repealed; G. O., 19th Oct. 1852, rr. 21, 22.]

Powers to consolidate, im-

adjudication of bankruptcy, or may impound any petition for adjudication of bankruptcy, or judgment debtor summons, and the proceedings thereunder, or any part thereof, upon such terms as the court shall think fit, or may transfer any petition for adjudication of bankruptcy, or judgment debtor summons, and the proceedings thereunder, and the prosecution or further prosecution thereof, from the court in any one district to the court in any other district, or to a county court having jurisdiction in bankruptcy; and the court to which any such transfer shall be made may remove the official assignee, and appoint a new official assignee to any such bankruptcy.

pound and transfer proceedings upon petitions.
[*C. C. O.*, 1st July, 1863, r. 36; see act of 1849, scheds. P, Q, R.]

89. The amount of the debt of any creditor petitioning for adjudication of bankruptcy against a debtor, whether a trader or not, shall be as follows; that is to say,

Amount of petitioning creditor's debt.

The debt of a single creditor, or of two or more persons being partners, shall amount to fifty pounds or upwards:

[Vice act of 1849, sect. 91, repealed; but see post, sect. 97, and comments in text.]

The debt of two creditors shall amount to seventy pounds or upwards:

The debt of three or more creditors shall amount to one hundred pounds or upwards:

Every person who has given credit to any debtor upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such debtor committed an act of bankruptcy, may so petition or join in petitioning, whether he shall have any security for such sum or not.

90. The debt of the petitioning creditor of any debtor not being a trader, and not being at the time a prisoner against whom such creditor would have been entitled to obtain a vesting order in insolvency if this act had not passed, must be a debt contracted after the passing of this act; and the judgment debtor summons must be a summons in respect of a debt contracted or of a liability incurred after the passing of this act.

Debt of petitioning creditor of a non-trader must be contracted after passing of act, &c.

[See ante, sect. 76 et seq.]

91. If the debt stated by the petitioning creditor in his affidavit, or in his petition for adjudication, to be due to him from any debtor, shall not be really due, or if, after a petition for adjudication of bankruptcy filed, it shall not have been proved that the person against whom such petition had been filed was liable to an adjudication of bankruptcy at the time of the filing of such petition, and it shall also appear that such petition was filed fraudulently or maliciously, the courts shall and may, upon petition of any person aggrieved by such petition, examine into the same, and order satisfaction to be made to him for the damages by him sustained.

Petition fraudulently or maliciously filed, court may order satisfaction.

[See also act of 1849, sect. 267.]

92. A petition for adjudication of bankruptcy or judgment debtor summons against any debtor indebted in the amount aforesaid to any copartnership duly authorized to sue and be sued in the name of a public officer or agent of such copartnership may be filed or sued out by such public officer or agent as the nominal petitioner for and on behalf of such copartnership; provided such public officer or agent shall, in a declaration signed by him, in such form as general orders shall direct, declare that he is such public officer or agent, and that he is authorized to sue.

Petition by the public officer of co-partnership.

[*G. O.*, 12th Oct. 1861, sched. 14.]

93. Every debtor petitioning against himself shall file in court a full, true and accurate statement, verified by the oath of the petitioner, of his debts and liabilities of every kind, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements, within such time after filing his petition, and in such form, as general orders shall direct.

Debtor petitioning against himself to file statement of debts.

[*G. O.*, 12th Oct. 1861, r. 4, and scheds. 5, 6; *C. C. O.*, 1st July, 1863, r. 21; see also *ib.*, r. 22; *C. C. forms*, 32, 33.]

94. Where a debtor petitions for adjudication against himself, and knows or verily believes the debts justly due and proveable under the bankruptcy to amount in the whole to a sum not exceeding three hundred pounds, such fact shall be stated on oath, and if he be resident within the metropolitan district as herein defined, he shall file his petition in the London court of bankruptcy, and where such debts shall not exceed three hundred pounds (a), and the debtor shall not be resident in the metropolitan district, he shall file his petition in the county court for the district in which he shall have resided for the six months next before the filing of his petition, or for the longest period during those six months, unless he is in custody, and then in the county court for the district in which he is in custody; but such court, if it make adjudication, shall transfer the proceed-

Debtors residing in the metropolitan district to file petition in London court; not residing in metropolitan district, in county court.

[Where debts eventually are found to exceed 300l., see *C. C. O.*,

(a) See post, sect. 97.

1st July, 1863, r. 46.]

Notice to gaoler.

[See additional forms, 10; C. C. forms, 3.]

Where petitioner does not proceed, power for court to adjudicate.

[Vice act of 1849, sect. 96, repealed; see act of 1849, sched. T.]

What shall be reckoned as debts, for the purposes of a petition under this act.

[See ante, sect. 93; see also sect. 89, and comments in text.]

Power for prisoners for debt to petition in formâ pauperis.

[See additional forms, 11; C. C. forms, 14; see C. C. O., 1st July, 1863, rr. 29, 30; C. C. forms, 15.]

Proceedings upon such petition.

[See additional forms, 12; C. C. forms, 16, 17.]

Gaoler to make monthly return of all prisoners for debt.

[G. O., 12th Oct. 1861, rr. 21—23, 26; C. C. forms, 18.]

ings to the county court in which the debtor, if not in custody, would have been required to petition.

95. Every debtor who shall present a petition for adjudication whilst a prisoner in any prison or gaol shall by writing give notice to the keeper of such gaol or prison of his intention so to do, and shall in his petition state that such notice has been given.

96. If the petitioning creditor shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the court, the court may, at any time on the expiration of such three days, or of such extended time, as the case may be, upon the petition of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such last-mentioned petition. If a debtor petitioning against himself does not obtain adjudication within twenty-four hours after filing such petition, the court may proceed to adjudge the debtor a bankrupt on the petition of any competent creditor.

97. In the computation of debts for the purposes of any petition under this act there shall be reckoned as debts,—

1. Sums due to creditors holding mortgages or other available securities or liens; after deducting the value of the property comprised in such mortgages, securities or liens:

2. Such interest and costs as shall be due in respect of any of the debts:

But there shall not be reckoned,—

1. The amount of the debts in respect of which the petitioner has already taken the benefit of insolvency, protection or bankruptcy:

2. Debts barred by any statute of limitations.

As to adjudication of bankruptcy against pauper and other prisoners for debt:

98. If any debtor, whether a trader or not, now being or who shall be imprisoned for any debt or demand, shall through poverty be unable to petition the proper court for an adjudication of bankruptcy against himself, he shall be at liberty to petition in formâ pauperis, upon making an affidavit that he has not the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of bankruptcy. Such affidavit may be sworn before the gaoler of the prison where such debtor is confined, and such gaoler is hereby empowered and required to take such affidavit, and swear the deponent thereto, without fee or reward.

99. Every person so petitioning in formâ pauperis as aforesaid shall, if not previously discharged by a registrar, be brought up to the county court of the district at its next sitting after the presentation of such petition, and shall be examined by the court touching his estate and effects, debts, dealings and transactions; and if the court shall be satisfied with such examination it shall make an order of adjudication of bankruptcy against the petitioner, and, if it think fit, grant an order of protection to the petitioner.

100. The gaoler of every prison in England or Wales within the walls, rules or liberties whereof any person shall be in custody upon any process whatsoever, for or by reason of any debt, claim or demand whatsoever, shall on the first day of every month, or if such day shall happen to be Sunday, then on the day next following, make a return under his hand of the name of every such person, and the date of his or her imprisonment, and the nature and amount of the debt or demand, debts or demands, for which he or she is imprisoned or in custody, and whether he or she is willing or refuses to petition the court of bankruptcy, or is unable to do so by reason of poverty, or in such other form and manner and with such particulars as any general orders shall direct. Such return shall also include the names and addresses of every creditor at whose suit each such prisoner is imprisoned or detained, and shall be made by gaolers of prisons situate within the London district to the London court, and by the gaolers of prisons within the country districts to the district court of bankruptcy, or the county court having jurisdiction in bankruptcy, within the jurisdiction of which the gaol is situate, as the case may be.

101. The commissioner or county court judge, as the case may be, shall in every case, on receiving such return, make an order that a registrar of the court of bankruptcy or of the county court of the district in which the gaol is situate shall attend at the gaol on a day to be named, being at least seven and not more than twenty-one days from the date of such return. Notice of such order shall be forthwith given to the gaoler and also to the execution and detaining creditors of every prisoner included in such return. On the day named in the order the registrar shall attend at the prison, and examine every prisoner included in such return who shall have been in prison, being a trader, for fourteen days, or, not being a trader, for two calendar months, touching his estate and effects, debts, dealings and transactions: The registrar shall also ascertain the last place of abode and business of each such prisoner within the six months next prior to his imprisonment. The registrar shall have power to make an order of adjudication in bankruptcy against every such prisoner, and to grant him protection, and to make an order for his release from prison, and shall also direct in what court such adjudication shall be prosecuted, having regard to the amount of debts and the place of trade or residence of the prisoner within the six months next preceding his imprisonment. The registrar shall certify the particulars of each case to the court of which he is registrar.

Registrar to attend at the gaol, and examine every prisoner in such return.

[G. O., 12th Oct. 1861, rr. 24, 25, 27, 31; for form, see r. 26; see also additional forms, 27; C. C. O., 1st July, 1863, rr. 31—33; C. C. forms, 19—21.]

Power for registrar to make order of adjudication.

[See additional forms, 28; G. O., 12th Oct. 1861, r. 27; C. C. forms, 22—24.]

102. If the prisoner shall refuse to appear or to be sworn, or to answer all lawful questions of such registrar or of the execution or detaining creditor, or of any other creditor who shall be present, respecting his debts, liabilities, dealings and transactions, or to make a full discovery of his estate and effects, and of all his books of account, or to produce the same, or to sign his examination when taken, the registrar shall report the same to the court, and the court may, by warrant under the hand and seal of the judge or commissioner, commit him to the common gaol of the county, there to be kept, with or without hard labour, for any time not exceeding one month, and the court may at the same time adjudge such prisoner bankrupt; provided that if after such adjudication the bankrupt shall, before the period of such commitment has expired, submit to be examined, and in all things conform to the jurisdiction of the court, he shall have in all respects the same benefit as if he had submitted to the court in the first instance.

Where such prisoner refuses to conform, the court may commit him.

[C. C. form, 25.]

[C. C. forms, 26, 27.]

[C. C. form, 28.]

103. Every adjudication against any prisoner for debt so brought up as aforesaid shall, unless the court shall otherwise direct, have relation back to the date of his commitment or detention, as the case may be, and shall be as valid and effectual for all purposes as if it had been made under any other of the provisions of this act.

Effect of adjudication against prisoner for debt.

104. No person who is in custody solely under or by reason of any warrant or order made or issued by or by the authority of a judge, under the provisions of the act of the eighth and ninth years of her present majesty, chapter one hundred and twenty-seven, or of the act of the ninth and tenth years of her present majesty, chapter ninety-five, or by the authority of any court having the power to commit any person to prison upon or by reason of any order or judgment wherever there shall have been recovered a sum for debt not exceeding twenty pounds exclusive of costs, shall be included in the return so directed to be made by gaolers as aforesaid, or released from such imprisonment by virtue of any order to be made by the registrar as aforesaid, or be entitled to petition in forma pauperis under this act.

Persons imprisoned under 8 & 9 Vict. c. 127, and 9 & 10 Vict. c. 95, &c., not to be included in the return.

105. Every judge in acting under the last-mentioned statutes, and in deciding whether the party summoned before him has then or has had since the judgment obtained against him sufficient means and ability to pay the debt or damages, or costs, so recovered against him, either altogether or by any instalment or instalments as ordered, shall take into consideration all the debts and liabilities of the party so summoned, and his conduct in disposing of his money or property since the judgment was given.

Discretion of county court judge under 8 & 9 Vict. c. 127, and 9 & 10 Vict. c. 95.

As to lunatic prisoners for debt:

106. If any person being or alleged to be of unsound mind shall be in prison for debt, the gaoler shall forthwith require a justice of the peace for the county or place wherein such prison shall be to visit such debtor, and to inquire into his

Adjudication in case of lunatic prisoners for debt.

[C. C. forms, 29—31; see additional forms, 29, 30.]

Power thereupon for justice of the peace to remove such prisoners to county asylum.

Official assignee to take possession.

[G. O., 12th Oct. 1861, r. 12; see additional forms, 42; C. C. O., 1st July, 1863, rr. 24, 28; C. C. form 36.]

Meeting of creditors.

[G. O., 12 Oct. 1861, rr. 3, 29—31; C. C. O., 1st July, 1863, rr. 16, 38, 39, 42.]

Proof of debts.

[See G. O., 12 Oct. 1861, sch. 15, 19; additional forms, 47, 66; C. C. forms, 52, 53, 55.]

Transfer to county court.

[Additional forms, 49; C. C. O., 1st July, 1863, r. 37. See additional forms, 53; C. C. form, 58; see act of 1849, sect. 194.]

Option to creditors.

[Additional forms, 75—84; C. C. O., 1st July, 1863, rr. 39, 40, 41; C. C. forms, 60—63.]

state of mind; and such justice shall call to his assistance two duly qualified medical practitioners, each of whom shall be a physician, surgeon or apothecary, and each of whom shall separately examine such debtor; and if such two medical practitioners shall each sign a certificate with respect to such debtor, according to the form in schedule (H.) to this act annexed, and such justice shall be satisfied from his own view that such debtor is of unsound mind, he shall certify the same to the proper court, and thereupon the court may appoint some person to represent such debtor, and direct such proceedings to be taken for adjudication in bankruptcy against him as the court shall think fit; and all proceedings under such adjudication shall be had and carried on in the same manner and with the like effect as if such prisoner had been of sound mind, and had presented a petition to the court for adjudication of bankruptcy, or as near thereto as the difference of circumstances will permit.

107. Any justice of the peace of the county or place aforesaid may thereupon remove such prisoner from such gaol, and may cause him to be sent to the asylum of the county in which such gaol shall be situate, in order that he may be placed under care and treatment as a lunatic; and such removal shall not be considered as an escape or final discharge from such gaol, and such prisoner shall thereafter be dealt with in all respects as a pauper lunatic, and shall be subject to the acts of parliament for the time being in force respecting pauper lunatics, or as near thereto as circumstances will permit: Provided nevertheless, that, in the event of his recovery from his lunacy, he shall, if still liable to be detained in custody as a debtor, be remitted to the gaol from whence he was received.

As to procedure after adjudication:

108. Immediately on adjudication it shall be the duty of the official assignee to take possession of the bankrupt's estate, and to retain possession thereof until the appointment of a creditors' assignee; but if such official assignee, or if the court, upon the representation of any creditor, shall be of opinion that the keeping possession of the bankrupt's property is not requisite for the due protection of the creditors, such possession shall not be continued.

109. As soon as conveniently may be after adjudication shall have become absolute, the court shall appoint a meeting of the creditors, of which ten days' notice shall be given in the London Gazette, and which meeting shall be held at such time and place as the court shall appoint; and at such meeting a registrar, or such other person as the court shall appoint for that purpose, shall preside, and receive the proofs of the debts of the creditors. The official assignee shall attend and give to the meeting the fullest information in his power of the estate and effects of the bankrupt, and of the debts due from his estate; and it shall be lawful for the majority in number and value of the creditors present at such meeting or at any adjournment thereof to resolve and determine that the proceedings in the bankruptcy shall be transferred to and thenceforth prosecuted in the county court of any district, other than the metropolitan district, and the court shall order the same accordingly, upon being satisfied that such resolution was duly made. At this meeting a majority in value of the creditors present shall determine whether any or what allowance for support shall be made to the bankrupt up to the time of passing his last examination.

110. In case at such meeting or at any other meeting of creditors any proposal shall be made by or on behalf of the bankrupt which it shall appear to the major part in value of the creditors then present ought to be accepted, or if it shall appear to the majority in value of the creditors present at any meeting to be desirable on any ground to resolve, and such majority shall resolve, that no further proceedings be taken in bankruptcy, the meeting shall be adjourned for fourteen days, in order that notice of such resolution may be given to every creditor by the official or creditors' assignee, which shall be done accordingly; and if at such adjourned meeting a majority in number representing three fourths in value of the creditors present shall so resolve, the proceedings in bankruptcy shall be suspended, and the estate and effects of the bankrupt shall be wound up and administered in such manner as such majority shall direct, and the bankrupt having made a full discovery of his estate shall be entitled to apply for an order of discharge.

111. From and after the passing of this act no attestation shall be required to give effect to the admission referred to in the one hundred and twenty-third section of "The Bankrupt Law Consolidation Act, 1849;" but such admission shall be signed in the presence of some officer of such court, who shall attest such signature thereto.

Amendment of 12 & 13 Vict. c. 106, s. 123, as to attestations to admissions of debt.

112. In any warrant of commitment issued by any court under this act it shall not be necessary to set forth or specify any question or any part of the examination of the person so committed, but it shall be sufficient to refer in the warrant to the examination or deposition of the person as remaining on the file of proceedings, and to specify in the said warrant the precise date of the examination or deposition so referred to; and such warrant shall be in the form contained in schedule (C.) to this act; provided, however, that in every case in which any person shall be so committed for refusing to answer or for not fully answering any question put to him, every such question shall be specified in the examination or deposition of the person committed remaining on the file of proceedings, and so referred to as aforesaid; and provided also, that a copy of the said examination or deposition so referred to shall be delivered personally to the person committed within twenty-four hours next after his actual committal to prison; and in default of the said copy being delivered the person committed shall be discharged from custody, either by the court or by the judge before whom such person may be brought by habeas corpus, with such costs, if any, as the said court or judge may deem just.

Form of warrant for commitment of bankrupt. [Vice act of 1849, sect. 261.]

Copy of his examination to be delivered to person committed. [C. C. forms, 69.]

113. If any person so committed shall sue forth any writ of habeas corpus in order to be discharged from such commitment, he shall not be discharged by reason of any mere matter of form, but if the court or judge before whom he shall be brought, upon inspection and consideration of the whole of the examination or deposition of such person, shall be of opinion, that the answer or answers of such person is or are satisfactory, the court or judge may order the person so committed to be discharged.

Discharge of person committed.

114. The court shall have power to dispose, for the benefit of the creditors, of any estate or interest at law or in equity which at adjudication or afterwards, before order of discharge, a bankrupt has in any copyhold or customary land, and to make an order vesting the land or such estate or interest as the bankrupt has therein in such person and in such manner as the court shall think fit.

As to copyholds and customary lands of bankrupt. [Vice act of 1849, sect. 209, repealed; G. O., 12th Oct. 1861, r. 17.]

115. Where, under any settlement or will, a bankrupt non-trader shall be entitled to a life estate, in remainder expectant upon the death or deaths of any previous tenant or tenants for life, with any remainder over to the bankrupt's issue, or the heirs of his body or any of them as purchasers, the life estate of such bankrupt non-trader shall not be sold before it falls into possession without an express direction of the court.

Life estate in remainder, &c.

As to the choice of a creditors' assignee:

116. At the first meeting of creditors, or any adjournment thereof, it shall be competent to the majority in value of the creditors who have proved debts to choose an assignee or assignees of the bankrupt's estate and effects, and to be called the creditors' assignee; provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be such assignee, and upon such rejection a new choice of creditors' assignees shall be made.

Creditors' assignee when and how to be chosen. [Altering act of 1849, sect. 139; see additional forms, 51, 85; C. C. forms, 56.]

117. Upon the appointment of the creditors' assignee, all the estate, both real and personal, of the bankrupt, shall be divested out of the official assignee, and vested in the creditors' assignee.

On appointment of creditors' assignee bankrupt's estate vested in the same.

118. The official assignee shall forthwith render to the creditors' assignee a full and particular account or balance sheet of the bankrupt's estate, and of all receipts, payments and other transactions of such official assignee, and also a list of all the creditors of the bankrupt who have proved their debts against the estate.

Official assignee to render account to the creditors' assignee. [See additional forms, 54, 85.]

119. The creditors' assignee shall, in the presence of a registrar, audit such account, and may call for such information from the official assignee as he possesses concerning the estate. The account shall be audited in the presence of the judge of the court, in cases where the registrar of such court is also the

Creditors' assignee shall audit accounts of official assignee. [G. O., 19th Oct. 1852, rr. 65-67.]

official assignee. A printed copy of such account of the official assignee, when audited, shall, unless the registrar or the judge, as the case may be, shall otherwise direct, be sent by post by the creditors' assignee to every creditor who has proved.

Custody of bankrupt's books.

[See act of 1849, sect. 105.]

Bankrupt's books not subject to lien.

Security by creditors' assignee.

[See additional forms, 86.]

[Additional forms, 52.]

Certificate of appointment of assignee.

[Additional forms, 51; C. C. form, 57.]

Removal of creditors' assignee or manager.

[Additional forms, 89—91.]

Mode of electing new creditors' assignee; his powers and duties.

As to valuation of bankrupt's property.
[G. O., 19th Nov. 1861.]

Duties of creditors' assignee.

[In case of neglect by assignee, see additional forms, 110—116.]

120. The court shall give such directions as it may deem expedient with respect to the custody and inspection of the books, papers, writings and documents relating to the estate, and may authorize the official assignee to have the custody thereof or of any part thereof.

121. No person shall be entitled, as against the official or creditors' assignee, to withhold possession of the books of account of the bankrupt, or to claim any lien thereon.

122. The majority in value of the creditors present at the meeting for choice of a creditors' assignee shall determine whether any security shall be given by such assignee, and if so, the amount and nature thereof, and such security may, if the creditors so determine, be by way of bond given to any registrar of the court or his successors, who are hereby authorized to sue thereon. At the same meeting, or at any other meeting called for the purpose, the majority in value of the creditors present may also determine whether a manager shall be appointed to collect and wind up the estate, under the inspection of the creditors' assignee, or of a committee of creditors, and may appoint such person, with such remuneration out of the estate, and generally upon such terms, for such period, and with such directions as the majority shall think fit.

123. When the election of an assignee shall have been accepted by the person elected and confirmed by the court, the court shall, by certificate under the hand of the commissioner and the seal of the court (to be called the certificate of appointment), declare such creditors' assignee to have been duly elected, and appoint him to the said office accordingly. Such appointment shall be final, and shall not be subject to review or appeal, except as hereinafter provided.

124. A majority in number and value of the creditors may, at any meeting duly called for the purpose, remove the creditors' assignee or manager or accept of his resignation; and one fourth in value of the creditors who have proved may at any time apply to the court, by petition, for the removal of the creditors' assignee or manager, and if on the hearing of such petition the court shall be of opinion that sufficient reason has been shown, it may remove such creditors' assignee or manager, and appoint a meeting of the creditors to be held for electing a new creditors' assignee; and if the assignee shall die, resign or be removed, or remain abroad for three months at any one time, any creditor may apply to the court to appoint a meeting for electing a new creditors' assignee, and the court may accordingly appoint a meeting, whereof at least seven days' previous notice shall be given in the London Gazette, and such meeting may elect a new creditors' assignee accordingly.

125. In all cases of the election of a new creditors' assignee the proceedings shall take place in the like manner as is hereinbefore provided in the case of the first election, and the new creditors' assignee shall have the same powers and perform the same duties as the creditors' assignee first chosen, and shall call to account such creditors' assignee, his heirs, executors, administrators or assigns, as the case may require.

126. No valuation of a bankrupt's property shall be made, unless the court shall so direct; and any valuation required by the creditors shall be made in such manner and upon such terms as general orders shall from time to time direct.

As to the rights and duties of the creditors' assignee:

127. The creditors' assignee shall manage, and, except as herein provided, realize and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, and he shall pay all monies not necessarily retained for current expenses, all exchequer bills, India bonds and all other public securities, and all bills, notes and negotiable instruments belonging to the estate, forthwith upon receipt thereof, into the bank of England, to the account of the accountant in bankruptcy, unless in the case of any adjudication in a

country district there shall be no branch of the bank of England in the locality, and then into such bank as the court shall direct, to the credit of an account to be opened in such bank by such assignee in his official character.

128. The official assignee shall collect, realize and recover every debt due to the estate the amount of which shall not exceed the sum of ten pounds, and shall pay all sums so collected, realized and recovered forthwith into the bank of England, or otherwise in manner in the next preceding clause provided; and as to all such sums of money he shall be and shall be deemed sole assignee of the estate, notwithstanding the appointment of a creditors' assignee.

The official assignee to collect debts under 107.

129. The creditors' assignee shall, at the end of three months from and after his appointment, and thenceforth at the expiration of every succeeding three months, render to the official assignee, in the presence of the registrar, a debtor and creditor account of all sums received and paid on account of the bankrupt or his estate, verified on oath as a full, true and faithful account of his receipts and payments as such creditors' assignee; and the vouchers for such account, and all books of account in his possession or power, together with his banker's pass book, shall be produced by him to the official assignee, who shall examine the same, and if he shall be dissatisfied with such account, the same, or any part thereof, or any matter arising thereon, shall be inquired into and considered by the registrar, in the presence of the official and creditors' assignee; and if no creditors' assignee be appointed, the official assignee shall in like manner render the account herein required to the registrar, who shall examine the same: Provided, that in the case of county court registrars their accounts, as official assignees, shall be in like manner rendered to and examined and passed by the judges of their respective courts.

Creditors' assignee to render accounts to official assignee every three months.

[See additional forms, 94, 95.]

[C. C. forms, 84.]

If no creditors' assignee appointed, official assignee to render accounts.

[C. C. forms, 84.]

130. Forthwith after the passing of each such account of the creditors' assignee, a copy thereof, or a statement showing the nature and result of the transactions and accounts of the assignee, shall be made out by the official assignee, and sent by him in a printed form through the general post to every creditor who has proved under the bankruptcy.

Accounts to be printed and circulated.

131. In every case of a lease or an agreement for a lease it shall be lawful for the assignees to elect to take the same and the benefit thereof, and to keep possession of the premises up to some quarter or half-yearly day on which rent is made payable by the same lease or agreement, such day not being more than six months from the adjudication of bankruptcy, and upon such day to decline such lease or agreement for a lease.

Assignees may elect to take lease for limited period.

[See act of 1849, sect. 145.]

132. Any mortgagee, with the leave of the court first obtained, may bid at any sale of the mortgaged property.

Mortgagee may bid at sale.

[G. O., 12th Oct. 1861, r. 18.]

133. If it shall appear to any meeting of the creditors summoned by the assignees, by notice stating the object of the meeting, and at which three fourths in value of the creditors shall be present or represented, that the debts of any bankrupt can be discharged by means of money raised by way of mortgage or pledge of any of his property, and such meeting shall pass a resolution accordingly, it shall be lawful for the assignees, when thereunto authorized by order of the court, to execute such mortgage or pledge, with or without powers of sale and other powers, and in such manner in all respects as shall be specified in such order; and the court may order the execution of such mortgage or pledge by any other necessary parties, and give all necessary directions for the purpose of carrying into effect the resolution of the creditors.

Power to mortgage or pledge bankrupt's property.

[G. O., 12th Oct. 1861, r. 17.]

134. The court may order such portion of the pay, half-pay, salary, emolument or pension of any bankrupt as, on communication from the court, the secretary of state for war, or the secretary of state for India, or the lords commissioners of the admiralty, or the commissioners of the customs or excise, or the chief officer of the department to which such bankrupt may belong or may have belonged, or under which such pay, half-pay, salary, emolument or pension may be enjoyed by such bankrupt, may officially sanction to be paid to the assignees, to be applied in payment of the debts of such bankrupt; and such order and sanction being lodged in the office of her majesty's paymaster general, or of the secretary of state for India, or of any other officer or person appointed to pay or paying any such pay, half-pay, salary, emolument or pension, such portion of the said pay, half-pay, salary, emolument or pension as shall be specified in

Portion of pay, half-pay, salary or pension of bankrupt to be applicable for creditors.

[See additional forms, 136.]

such order and sanction shall be paid to such assignees until the court shall make order to the contrary.

Sequestration of profits of benefice of bankrupt clergyman may be obtained.

[*C. C. forms*, 79, 80.]

135. If any bankrupt be a beneficed clergyman the assignees may apply for and obtain a sequestration of the profits of the benefice of such bankrupt, which profits shall form part of the bankrupt's estate, and be applied accordingly; and the certificate of appointment of such assignees shall be a sufficient authority for the granting of such sequestration, without any writ or other proceeding to authorize the same, and such sequestration shall accordingly be issued as the same might have been issued upon any writ of *levari facias* founded upon any judgment against such bankrupt: Provided always, that the sequestrator shall allow out of the benefice to the bankrupt whilst he performs the duties of the parish or place such an annual sum, payable quarterly, as the bishop of the diocese in which the benefice is situated shall direct; and it shall be lawful for the bishop to appoint to such bankrupt such or the like stipend as by law he might have appointed to a curate duly licensed to serve such benefice in case the bankrupt had been non-resident.

Court may determine on all differences between assignees and creditors, or between parties claiming under trust deeds.

[*See post*, *sects.* 192, 197.]

136. In case of any claim, dispute or difference between the official assignee, the creditors' assignee and the creditors, or any of such persons, or between any persons claiming under a trust deed, deed of composition or arrangement, relating to any bankrupt's or debtor's estate, or to any money or property claimed as part of the estate of any bankrupt or debtor, either party may apply to the court having jurisdiction in the bankruptcy, and in other cases to the court in London; and it shall be lawful for the court to determine the same, and to summon and examine upon oath the official or creditors' assignee, trustee or any other person whomsoever, as to any matters and things concerning the bankruptcy or trust estate, and to direct such inquiries, and to give such directions, and make such orders relative thereto, as shall to the court seem just and expedient, and to award costs, personally or in any other manner, against the official or creditors' assignee, trustee or any other person; provided that in all cases in which a resolution has been come to by a majority in number and value of the creditors assembled in a meeting, regard shall be had by the court to such resolution, and the same shall not be varied or set aside by the court, unless such resolution shall, in the opinion of the court, be unjust or inequitable, and not fit to be binding and conclusive under this act.

Power for assignees to sell bankrupt's book debts, goodwill, &c.

[*G. O.*, 12th Oct. 1861, *r.* 17;
C. C. O., 1st July, 1863, *rr.* 11, 45;
C. C. forms, 40.]

137. At any time after the expiration of twelve months from adjudication, or at any earlier period with the approbation of the court, the assignees may sell by auction or tender, or, with the sanction of the court, by private contract, all or any of the book debts due or growing due to the bankrupt, and the books relating thereto, and the goodwill of his trade or business, and assign the same to the purchaser; and such purchaser shall, by virtue of the assignment, have power to sue in his own name for the debts assigned to him, as effectually, and with the same privileges concerning proof of the requisites of bankruptcy and other matters, as the assignee himself.

Disposal or custody of bankrupt's books and papers after his affairs are wound up.

[*G. O.*, 12th Oct. 1861, *r.* 17.]

138. When the affairs of the bankrupt are fully wound up, the court may, subject to the directions of any general order, make from time to time such orders as in each case seem fit respecting the disposal or custody of any books, papers or documents relating to property or affairs in the possession or under the control of the official assignee, the creditors' assignee, or any other person.

Removal of creditors' assignee.

139. If the creditors' assignee shall wilfully fail to observe any of the directions herein contained, or shall be guilty of any neglect in the performance of his duty, or it shall be made to appear to the court, on the application of any two or more creditors, that it would be for the benefit of the estate that such creditors' assignee should not continue to have the management and administration of the bankrupt's estate, it shall be lawful for the court either to appoint an official assignee to act jointly with such creditors' assignee, or to remove such creditors' assignee, and direct a choice of another creditors' assignee, or to appoint an official assignee alone to wind up and administer the estate under the bankruptcy.

Court to appoint sitting for last examination and application for discharge.

As to the last examination:

140. The court shall, forthwith after the meeting for the choice of an assignee by the creditors, appoint a public sitting on a day not later than sixty days from

the date of such meeting, and shall give notice of such sitting in the London Gazette, and in such newspapers as the court shall direct, for the bankrupt to pass his last examination, and also, unless the court shall in any case otherwise direct, to make application for his discharge; but the court shall have power to enlarge the time appointed for such sitting, or to adjourn the same.

141. The bankrupt shall prepare such statement of his accounts and in such form as general orders or as the court in any case shall direct, and shall subscribe such statement, and file the same in court ten days at least before the day appointed for the last examination, or adjournment thereof; and such statement may before such last examination be amended from time to time as occasion shall require and the court shall direct; and the bankrupt shall make oath of the truth of such statement, whenever he shall be duly required by the court so to do; and the last examination of the bankrupt shall in no case be passed unless his statement shall have been duly filed as aforesaid.

142. The statement of accounts, when filed in court, shall be open to the inspection of all creditors, who may take copies of and extracts from the same, subject to such regulations as general orders shall direct; and an abstract thereof shall be printed, and a printed copy of such abstract shall be sent by post within a week from the filing thereof, by the official assignee, to each creditor who has proved.

143. In the preparation of such statement of his accounts the bankrupt shall be assisted by the official assignee, who shall prepare and file in court, together with such statement, a report upon the state of the affairs of the bankrupt, setting forth such facts and particulars as may be required by the court, or as it shall in the opinion of such assignee be important for the court to be informed of: Provided that if it shall in any case appear to the court that there are special circumstances rendering it necessary that the bankrupt should be assisted in the preparation of such statement of accounts by some person other than such official assignee, the court may nominate some such person to assist the bankrupt in that behalf, and may allow to such person, out of the bankrupt's estate, such remuneration as to the court, upon the taxation of such person's bill of costs, shall seem just; and in such case the statement so prepared shall have appended thereto a certificate signed by the person appointed to assist the bankrupt in the preparation thereof, expressing his approval or disapproval thereof, and the particulars and reasons of such disapproval.

As to proof of debts:

144. Every creditor of the bankrupt may, after adjudication, prove his debt, by delivering or sending through the general post, before the appointment of the creditors' assignee, to the official assignee, and after such appointment to the creditors' assignee, a statement of such debt, and of the account, if any, between the creditor and the bankrupt, together with a declaration, signed by the creditor, appended thereto, that such statement is a full, true and complete statement of account between the creditor and the bankrupt, and that the debt thereby appearing to be due from the estate of the bankrupt to the creditor is justly due; and all bodies politic and public companies incorporated, or authorized to sue or bring actions, may prove by an agent, provided such agent shall in his declaration declare that he is such agent, and that he is authorized to make such proof; and such declaration, signed by such creditor and agent respectively as aforesaid, shall be in such form as general orders shall direct.

145. Any person who shall wilfully and corruptly make any declaration for proof of debt as aforesaid, knowing the same, or the statement of account to which the same shall be appended, to be untrue in any material particular, shall be deemed guilty of a misdemeanor, and shall be liable to undergo the pains and penalties imposed upon persons guilty of wilful and corrupt perjury.

146. Every creditor of the bankrupt may also after adjudication prove his debt by deposition in court or in chambers, or before a registrar at any meeting of creditors elsewhere than in court, or by affidavit, upon his own oath, or upon that of any clerk or other person in his employment; provided that where such deposition or affidavit shall be made by any other person than the creditor, the deponent shall, in his deposition or affidavit, set forth that he is duly authorized

[See form, G. O., 6th Nov. 1862; C. C. O., 1st July, 1863, r. 47; C. C. forms, 67, 91, 95; see additional forms, 118—121.]

The bankrupt to prepare and file a statement of accounts.

[Vice act of 1849, sect. 160; G. O., 19th Oct. 1852, r. 59; see sched. 16; C. C. forms, 64.]

Statement of accounts to be open to creditors.

[See act of 1849, sect. 232; C. C. forms, 65.]

Official assignee to assist in preparing such statement; and to file therewith a report upon the state of bankrupt's affairs.

[See act of 1849, sect. 105; see also act of 1849, sect. 143.]

[See additional forms, 133; C. C. forms, 66.]

Power to grant assistance to bankrupt to make out statement under special circumstances.

[C. C. forms, 44.]

When and how debts may be proved.

[See act of 1849, sect. 164; see also post, sect. 146; G. O., 19th Oct. 1852, rr. 53, 54; see also sched. 15.]

Declaration for proof of debt.

[C. C. forms, 47, 48.]

False declaration a misdemeanor.

[See act of 1849, sect. 254.]

Proof in court or in chambers, or before a registrar, or by affidavit.

[See ante, sect. 144; see additional forms, 56, 57; C. C. forms, 49.]

Official assignee to examine all statements of account; and make out list of creditors who have proved.
[See additional forms, 54; C. C. forms, 86.]

Power to examine upon oath alleged creditors, &c.

[See sched. C. to this act; C. C. forms, 88.]

Proof for money, costs, &c. of which payment may be enforced by process of contempt.
[See act of 1849, sect. 181.]

Proof for proportionate part of rent and other payments falling due at fixed periods.

Proof in case of debt payable by instalments.
[See act of 1849, sects. 172.]

Proof in respect of distinct contracts.

Proof in respect of unliquidated damages.
[See additional forms, 63.]

Proof for premiums upon policies of insurance.
[See additional forms, 62; see also act of 1849, sects. 175, 176.]

How proof may be expunged or reduced.
[G. O., 12th Oct.]

by his principal to make the deposition or affidavit, and that it is within his own knowledge that the debt was incurred, and for the consideration stated, and that to the best of his knowledge and belief the debt still remains unpaid and unsatisfied.

147. The official or creditors' assignee, as the case may be, shall examine all the statements of account aforesaid, and compare the same with the books, accounts and other documents of the bankrupt, and shall from time to time make out a list of the creditors who have proved their debts, stating the amount and nature of such debts, which list shall be open to the inspection of any creditor who has proved under the estate.

148. The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath or otherwise any person tendering or who has made a proof, and may summon any person capable of giving evidence concerning such proof; and, in like manner, where the debt is tendered on affidavit or statement, as hereinbefore provided, may summon and examine on oath or otherwise the person who has made the affidavit or statement, and any other person capable of giving evidence concerning the debt sought to be proved.

149. A person entitled to enforce against the bankrupt payment of any money, costs or expenses by process of contempt issuing out of any court, shall be entitled to come in as a creditor under the bankruptcy, and prove for the amount payable under the process, subject to such ascertaining of the amount as may be properly had by taxation or otherwise.

150. In all cases in which the bankrupt is liable to pay any rent or other payment falling due at fixed or stated periods, and the adjudication of bankruptcy shall happen at any time other than one of such fixed or stated periods, it shall be lawful for the person entitled to such rent or other payment to prove for a proportionate part thereof up to the day of the adjudication of bankruptcy, in such manner as if the said rent or payment grew due from day to day, and not at such fixed or stated periods as aforesaid.

151. If any bankrupt shall have contracted, before the filing of a petition for adjudication, any debt payable by way of instalments, the creditor may prove for the amount of such instalments remaining unpaid at the time of such petition.

152. If any debtor shall, at the time of adjudication, be liable upon any bill of exchange or promissory note in respect of distinct contracts as member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound-up in bankruptcy, or as a sole trader and also as the member of a firm, the circumstance that such firms are in the whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

153. If any bankrupt shall at the time of adjudication be liable, by reason of any contract or promise, to a demand in the nature of damages which have not been and cannot be otherwise liquidated or ascertained, it shall be lawful for the court acting in prosecution of such bankruptcy to direct such damages to be assessed by a jury, either before itself or in a court of law, and to give all necessary directions for such purpose; and the amount of damage, when assessed, shall be proveable as if a debt due at the time of the bankruptcy: Provided that in case all necessary parties agree, the court shall have power to assess such damages without the intervention of a jury or a reference to a court of law.

154. If any bankrupt shall at the time of adjudication be liable by reason of any contract or promise to pay premiums upon any policy of insurance, or any other sums of money, whether yearly or otherwise, or to repay to or indemnify any person against any such payments, the person entitled to the benefit of such contract or promise may, if he think fit, apply to the court to set a value upon his interest under such contract or promise, and the court is hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon.

155. The court may at any time expunge or reduce a proof of debt, on such application and such evidence as it shall think sufficient, and for that purpose may summon and examine upon oath or otherwise the person who has proved,

and every person capable of giving evidence concerning the alleged debt, and may make such order as to the costs of any application as shall seem just.

156. The court, out of the estate and effects of the bankrupt, shall order payment of all such parochial rates as may be due from him at the time of his being adjudicated a bankrupt; provided such rates have become due during the twelve months immediately preceding the bankruptcy.

As to assessed taxes, see act of 1849, sect. 166; G. O., 12th Oct. 1861, r. 17; C. C. O., 1st July, 1863, r. 11.

As to the discharge of the bankrupt:

157. From and after the commencement of this act all classification of certificates shall be abolished; and in every case where the discharge of a bankrupt shall be suspended, such discharge, when allowed, shall simply state the period for which it was suspended, and the reasons for such suspension; and if the bankrupt shall have been sentenced to imprisonment by any court under the provisions of this act the discharge shall also set forth the fact of such sentence and the period of such imprisonment.

Vice act of 1849, part of sect. 198, repealed; G. O., 12th Oct. 1861, sched. 17; C. C. forms, 78, 79.

158. After the bankrupt has passed his last examination, unless an order of discharge shall have been previously made as hereinbefore provided, the court shall appoint a sitting for the purpose of considering the question of granting to the bankrupt such order. Fourteen days' notice of such sitting shall be given in the London Gazette and such newspapers as the court shall direct. The assignees or any creditor who has proved may be heard against such discharge.

159. In granting orders of discharge the following rules shall be observed:

1. If on the hearing of any application for an order of discharge the assignees or any creditor shall allege, and if with or without such allegation the court shall be of opinion, that there is ground for charging the bankrupt with acts or conduct amounting to a misdemeanor under this act, the court shall, if the bankrupt consent thereto, direct a clear statement in writing of the charge to be delivered to the bankrupt, and shall appoint a day for trying the bankrupt on such charge, and, if the bankrupt require it, shall summon a jury for such purpose, and may direct the creditors' assignee, or the official assignee, or any of the creditors of the bankrupt, to act as prosecutor on such trial: Provided always, that in every case of accusation against a bankrupt of acts amounting to a misdemeanor, it shall be competent to the court to direct that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice; and in all other cases the order of discharge shall take effect immediately from its date, subject to the appeal herein provided:
2. If on such trial by a jury or by the commissioner alone the bankrupt shall be convicted of any offence by this act made a misdemeanor, the commissioner shall, in addition to the punishment awarded for the offence, have power to direct that the order of discharge be either wholly refused or suspended during such time and upon such conditions as he shall think fit.
3. If the bankrupt shall not be accused of acts amounting to misdemeanor, or if he shall have been accused and acquitted, but in either case there shall be made, or shall appear to the court to exist, objection to the granting of an immediate discharge, the court shall proceed to consider the conduct of the bankrupt before and after adjudication, and the manner and circumstances in and under which his debts have been contracted; and if the court shall be of opinion that the bankrupt has carried on trade by means of fictitious capital, or that he could not have had at the time when any of his debts were contracted any reasonable or probable ground of expectation of being able to pay the same, or that, if a trader, he has, with intent to conceal the true state of his affairs, wilfully omitted to keep proper books of account, or, whether trader or not, that his insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due from him, the court may either refuse an order of discharge, or may suspend the same from taking effect for such

1861, rr. 17, 18; C. C. O., 1st July, 1863, r. 11; G. O., 19th Oct. 1852, scheds. 15, 16; C. C. forms, 51.]

One year's parochial rates may be paid in full.

Classification of certificates abolished.

Form of discharge where suspended, or bankrupt sentenced to imprisonment.

Appointment of sitting for considering question of granting order of discharge. [Vice act of 1849, part of sect. 198 repealed; see additional forms, 143, 146.]

Rules as to granting orders of discharge. [See act of 1849, sects. 201, 256; also sects. 251—253; see also post, sect. 221; C. C. forms, 71—77.]

[Vice act of 1849, sect. 255, repealed; see also post, sect. 222 et seq.; see additional forms, 138, 139, 141.]

[See act of 1849, sect. 256, clause 3.]

[Ib., clause 9.]

[Ib., clause 7.]

[See additional forms, 137.]

[See additional forms, 140; C. C. form 159.]

Application for order of discharge where certificate of conformity has been refused.

[Vice act of 1849, sects. 200, in part, 205, in part.]

Release of bankrupt when arrested after discharge.

[Vice act of 1849, sect. 205, in part.]

Effect of order in case of partners, &c.

[Vice act of 1849, sect. 200, proviso.]

Contract, &c. pending proceedings in bankruptcy, not binding on bankrupt.

[Vice act of 1849, sect. 204.]

Order to operate as a discharge from effects of process for contempt.

[See act of 1849, sect. 205.]

Contract or security with intent to induce creditor to forbear opposition, void.

[Vice act of 1849, sect. 202.]

Proviso.

Obtaining money, goods, &c. as an inducement to forbear opposition, or to consent to allowance

time as the court may think fit, or may grant an order of discharge subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings or income which may afterwards become due to the bankrupt, and touching after-acquired property of the bankrupt, or may sentence the bankrupt to be imprisoned for any period of time not exceeding one year from the date of such sentence:

Provided always, that no person shall be liable by virtue of this act to any criminal proceeding or penalty in respect of any matter which may have occurred before the passing of this act to which he would not have been liable if this act had not passed.

160. With respect to all persons heretofore bankrupt, and whose certificates of conformity shall have been refused, it shall be lawful for the court, at any time after the expiration of three years from the time of, and notwithstanding such refusal, to hear and determine the application of any such bankrupt for an order of discharge, and thereupon, if the court shall think fit, to grant an order of discharge, either absolute or subject to any condition or conditions, in the same manner as if the bankruptcy of such applicant had taken place after the commencement of this act.

161. The order of discharge shall, upon taking effect, discharge the bankrupt from all debts, claims or demands proveable under his bankruptcy, save as herein otherwise provided; and if thereafter he shall be arrested, or any action shall be brought against him for any such debt, claim or demand, he shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence; and the order of discharge shall be sufficient evidence of the bankruptcy, and the proceedings precedent to the order of discharge.

162. If a bankrupt, after the order of discharge takes effect, be arrested or detained in custody for a debt, claim or demand proveable under his bankruptcy, where judgment has been obtained before the order of discharge takes effect, the court, or a judge of a superior court of law, shall, on proof of the order of discharge, and unless there appear good reason to the contrary, direct the officer who has the bankrupt in custody to discharge him, which shall be done accordingly, without fee.

163. The order of discharge shall not release or discharge any person who was a partner with the bankrupt at the time of the bankruptcy, or was then jointly bound, or had made any joint contract with him.

164. After the order of discharge takes effect, the bankrupt shall not be liable to pay or satisfy any debt, claim or demand proveable under the bankruptcy, or any part thereof, on any contract, promise or agreement, verbal or written, made after adjudication; and if he be sued on any such contract, promise or agreement he may plead in general that the cause of action accrued pending proceedings in bankruptcy, and may give this act and the special matter in evidence.

165. The order of discharge shall discharge the bankrupt from the effects of any process issuing out of any court for contempt of any court for nonpayment of money or of costs or expenses in any court, and from all costs which he would be liable to pay in consequence of or on purging his contempt; and a bankrupt in custody under any such process as aforesaid shall, on obtaining an order of discharge, be entitled to be discharged from such custody forthwith.

166. Any contract, covenant or security made or given by a bankrupt or other person, with, to or in trust for any creditor, for securing the payment of any money as a consideration or with intent to persuade the creditor to forbear opposing the order for discharge, or to forbear to petition for a rehearing of or to appeal against the same, shall be void, and any money thereby secured or agreed to be paid shall not be recoverable, and the party sued on any such contract or security may plead in general that the cause of action accrued pending proceedings in bankruptcy, and may give this act and the special matter in evidence: Provided always, that no such security, if a negotiable security, shall be void as against a bona fide holder thereof for value without notice of the consideration for which it was given.

167. If any creditor of a bankrupt shall obtain any sum of money, or any goods, chattels or security for money, from any person, as an inducement for forbearing to oppose, or for consenting to the allowance of the discharge of such

bankrupt, or to forbear to petition for the recal of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels or security so obtained.

168. The order of discharge, whether suspended or not, shall not be reviewed by the court, unless the court see good cause to believe that the order was obtained on false evidence, or by reason of the suppression of evidence, or otherwise fraudulently; in any of which cases the court may, if it think fit, upon the application of the bankrupt or of a creditor who has proved, and subject to such deposit for costs, and to such notices, by advertisement or otherwise, as the court shall think fit, grant a rehearing of the matter, and rehear it accordingly; and upon rehearing the court shall make such order as shall seem just, in like manner as it might upon an original hearing.

169. If on such rehearing the court shall annul or suspend the order of discharge, all persons having bonâ fide become creditors of the bankrupt between the time of the order originally taking effect and the time of its being annulled or suspended on rehearing shall, as against any property acquired by the bankrupt during the same period, and in priority to the original creditors, be admitted to prove and have dividends under the bankruptcy.

170. The order of discharge shall not be drawn up until after the expiration of the time allowed for appeal, or, if an appeal be brought, until after the decision of the court of appeal upon such appeal, and shall bear date either the day after the expiration of the time allowed for appeal, or the day of the decision of the court of appeal, as the case may require.

171. At any time within thirty days after any order of discharge shall have been allowed or refused, and subject to such order as to deposit of costs as general orders shall direct, any creditor of the bankrupt, or any creditors' assignee, or the bankrupt, may, if the order of discharge has been made or refused by any commissioner or county court judge, apply to the court of appeal in chancery that such order of discharge may be granted, or recalled and delivered up to be cancelled; and such court may, on good cause shown, order such order of discharge to be granted, or to be recalled and cancelled.

172. The order of discharge shall be in such form as general orders shall direct, and shall be under the hand of the commissioner and the seal of the court; and notice of the granting thereof shall be advertised in the London Gazette and in two local papers.

As to audit:

173. No public sittings of the courts shall be held for the sole purpose of auditing the accounts of the assignees, but such accounts shall be audited in such manner as is herein provided, or as general orders shall direct.

As to dividend:

174. At the expiration of four months from the date of the adjudication of bankruptcy, or as much earlier as the court shall appoint, the creditors' assignee shall submit to a meeting of creditors to be called for that purpose, and to be held before the registrar, of which meeting ten days' notice shall be given in the London Gazette and in two local newspapers, a statement of the whole estate of the bankrupt as then ascertained, of the property recovered, and of the property outstanding, specifying the cause of its being so outstanding, and of all the receipts, and of all payments thereout, made or to be made; and the official assignee shall, and any creditor who has proved may, attend and examine such statement, and compare the receipts with the payments; and upon ascertaining what balance is then in the bank of England or other bank to the credit of the estate, the meeting shall, by resolution, declare whether any and what part of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided amongst the creditors. At the same meeting the majority in value of the creditors present shall determine whether any and what allowance shall be made to the bankrupt out of his estate if he has obtained or shall obtain a discharge.

175. If upon such examination it shall appear that the creditors' assignee has kept in his hands at any time during the space of one week more than the sum

of discharge, penalty for. [Vice act of 1849, sect. 270, repealed.]

Rehearing of order of discharge.

[Vice act of 1849, sects. 203, 207, repealed.]

If order suspended on rehearing, subsequent creditors to prove first against subsequent property.

Order, when to be drawn up.

[Vice act of 1849, sect. 206, repealed; C. C. O., 1st July, 1863, r. 47.]

Appeal against decision, whether granting or refusing an order of discharge.

[Vice act of 1849, sect. 206, in part.]

Form of order.

[Vice act of 1849, sect. 199.]

Notice to be advertised.

[See additional forms, 146; C. C. O., 1st July, 1863, r. 47; C. C. forms, 93, 96.]

No public sitting for audit.

[Repealing act of 1849, sect. 185; see ante, sects. 119, 129, and post, 174, 179, 188.]

[Vice act of 1849, sects. 187—189.]

Dividend.

[See additional forms, 147—151;

C. C. forms, 84.]

[C. C. O., 1st July, 1863, r. 48.]

[C. C. forms, 85.]

[See act of 1849, sect. 195. Quære how far enactments consistent, see text.]

Assignee not to keep money in his hands,

[See also act of 1849, sect. 265; see additional forms, 111—114.]

Provision to be made for creditors residing at a distance; and for pending claims.

Joint and separate dividend sittings.

[See additional forms, 149—151; G. O., 12th Oct. 1861, r. 54.]

Dividend list to be prepared by official assignee. [C. C. forms, 86.]

[C. C. forms, 87.]

Like proceedings at successive periods of four months.

[C. C. forms, 85.]

Effect of discharge.

Unclaimed dividends, &c. to be paid into the bank.

[See act of 1849, sect. 191.]

Official assignee to act after discharge of creditors' assignee.

of fifty pounds belonging to the estate, the creditors may, upon establishing such fact to the satisfaction of the court, and if the assignee shall not show cause to the contrary, debit such assignee with interest for the amount so kept, at any rate not exceeding twenty pounds per centum by the year, for the time such monies were kept in his hands.

176. In the calculation of a dividend it shall be imperative to make provision for debts which shall appear from the bankrupt's balance sheet to be due to persons resident in places so distant from the court that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed; and also for debts, the subject of claims not yet determined by the court.

177. In every case where joint and separate estates have to be administered, and where the court shall not otherwise direct, dividends of the joint and separate estates shall be declared at one and the same sitting, and notice of the time appointed for such dividends, when advertised, shall be given in one and the same advertisement; and the costs, charges and expenses of and incident to the sitting shall be apportioned by the assignee between the joint and separate estates as may appear to be fair and reasonable, having regard to the work done for and the benefit received by each estate: and a single fee, and no more, shall be payable to the solicitor to the estate in respect of the sitting.

178. Within ten days after such meeting, or within such further time as the court may allow, the official assignee shall prepare lists of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved under the estate (subject to the provision herein contained as to dividends reserved) the dividend to which he is entitled, out of the net produce of the estate so set apart for a dividend, and shall forward by post to every such creditor a statement of the dividend to which he is so entitled, and such dividends shall be paid at the bank of England or otherwise in such manner as general orders shall direct.

179. The like proceedings for the making up and auditing of the accounts of the estate, and the declaration and payment of a dividend, which are herein directed to be had at the expiration of four months from the adjudication of bankruptcy, shall be had at the successive expirations of every period of four months, or earlier, as the case may be, until the whole of the estate is divided amongst the creditors, and a dividend is declared to be final; provided that it shall be lawful for the majority in value of the creditors at any such meeting as aforesaid to postpone the period of declaring a dividend, or at any time, in declaring a second dividend, to declare also that such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignee, in which case he shall, as soon as may be, convert such estate and effects into money, and within two months after the same shall be so converted the same shall also be divided in manner aforesaid.

As to the discharge of the creditors' assignee:

180. The order for discharge shall operate to release the creditors' assignee from all claims and demands of the creditors, or of any person who might have proved under the bankruptcy, subject nevertheless to such conditions, if any, as shall be expressed in such order of discharge.

181. Every creditors' assignee shall, before his discharge, transmit to the official assignee a list of unclaimed dividends on the estate, and of all debts remaining due to the estate, under his hand, and shall pay all monies and other estate of the bankrupt then in his hands into the bank of England, to the account of the accountant in bankruptcy, to the credit of the estate.

182. Where the creditors' assignee has obtained an order of discharge, the official assignee first appointed in the matter of the bankruptcy shall, as to any estate and effects of the bankrupt not realized at the time of such order of discharge, and as to all debts then remaining uncollected, and which shall not have been sold in manner herein provided, and as to any future-acquired property of the bankrupt, if made liable to the creditors under the conditions of discharge,

represent the estate in all respects as the sole assignee thereof, and shall have and exercise all the rights, duties, powers and authorities conferred by this act upon official and creditors' assignees.

183. The accountant in bankruptcy shall, on the application of any assignee, give to him a certificate stating the amount and description of any sum of money, notes, bills or other negotiable instruments which he may be desirous of paying into the bank of England under the provisions herein contained; and on the production of such certificate the governor and company of the bank of England shall receive the sum therein mentioned, and such bills, notes or other negotiable instruments, and give a receipt for the same, and shall forthwith carry the same to the credit of the accountant in bankruptcy; and every such certificate and receipt shall be given without fee or reward.

Bank of England to receive from assignee and give a receipt for any sum mentioned in a certificate of the accountant in bankruptcy. [Vice act of 1849, sect. 193, repealed; see additional forms, 156.]

184. All unclaimed dividends, save dividends declared before the passing of this act, and all monies unclaimed, the produce of any bankrupt's estate, shall, after the expiration of the period of twelve months from the dividend having been declared, or from the time at which any other monies unclaimed shall have come to the hands of the assignee, be transferred to the credit of "the unclaimed dividend account," subject to the order of the court for the payment thereof of any dividend due to any creditor, or for the distribution of any such other unclaimed money; and the interest and profit arising from the said account shall from time to time be paid over to the account of the chief registrar.

Unclaimed dividends. [See act of 1849, sect. 192; see additional forms, 153—158.]

As to change from bankruptcy to arrangement:

185. At the first meeting of creditors held after adjudication in manner herein provided, or at any meeting to be called for the purpose, and of which ten days' notice shall have been given in the London Gazette, three fourths in number and value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, composition or otherwise, and that an application shall be made to the court to stay proceedings in the bankruptcy for such period as the court shall think fit.

[Vice act of 1849, sects. 230, 231, repealed.] Power for creditors to resolve that estate ought to be wound up under deed of arrangement, &c.; and proceedings stayed. [See additional forms, 78; C. C. forms, 60—63.]

186. The registrar shall report such resolution to the court within four days from the date of such resolution; and the bankrupt, or any creditor nominated in that behalf by the meeting, may then apply to the court that the proceedings in bankruptcy may be stayed in the terms of such resolution; and the court, after hearing the bankrupt, and such creditors as may desire to be heard for or against the resolution, and if it shall find that the resolution was duly carried, and that its terms are reasonable, and calculated to benefit the general body of the creditors under the estate, shall confirm the same, and make order accordingly, and in such order shall give such directions as to the interim management of the estate as it shall deem expedient.

Resolution to be reported to the court. [See additional forms, 79.]

Power for court to confirm. [See additional forms, 82.]

187. If the proceedings in bankruptcy be stayed as herein provided, the bankrupt, or any creditor nominated in that behalf by the meeting aforesaid, may, at any time within the period during which the proceedings are so stayed, produce to the court a deed of arrangement, signed by or on behalf of three fourths in number and value of all the creditors of the bankrupt; and the court may consider the same, and may examine on oath the bankrupt and any of the creditors who may desire to be heard in support of or in opposition to the deed, and may make such other inquiry as it may think necessary; and if the court shall be satisfied that the deed has been duly entered into and executed, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall by order make a declaration of the complete execution of the deed, and shall direct the same to be registered with the chief registrar, and shall also, if it thinks fit, annul the bankruptcy; and such deed shall thereafter be as binding in all respects on any creditor who has not executed the deed as if he had executed it, provided such deed be registered with the chief registrar in manner directed by the order.

Power for court to make a declaration of complete execution of deed of arrangement; and to direct it to be registered; and to annul bankruptcy. [See additional forms, 82—84.]

Deed, if so registered, to be binding on creditors not executing.

188. Either before or after such order, the court shall have jurisdiction to entertain any application of the bankrupt, or of any party to the deed, or of any creditor or person claiming to be a creditor, respecting the disclosure, distribution, inspection, conduct, management or winding-up of the bankrupt's estate and affairs, or any act or thing relating thereto, or respecting the execution of

Court to have jurisdiction to entertain applications of bankrupt or any party to the deed respect-

ing bankrupt's estate and affairs.
[See additional forms, 169—171.]

Questions under the deed to be decided according to law of bankruptcy.

Power of the court to summon and examine bankrupt, &c.

Where bankruptcy to proceed as if no resolution had been passed.

Where bankruptcy annulled.
[See additional forms, 84.]

What deeds to be valid; and upon what conditions.
[See G. O., 12th Oct. 1861, r. 19; G. O., 22nd May, 1862, sched. B.; additional forms, 159—172.]

[G. O., 12th Oct. 1861, r. 19; additional forms, 159.]

any of the trusts or provisions of the deed, or the audit or examination of the accounts of a trustee or inspector, or the taxation or examination of the costs or charges of any attorney, solicitor, accountant, auctioneer, broker or other person acting or employed under the deed, or generally for the decision of any dispute or question, and shall also have jurisdiction to entertain any application of any such person as aforesaid respecting any matter for the submission whereof to the court provision is made by the deed, or any matter arising between any of the said persons and any other person appearing and submitting to the jurisdiction of the court; and the court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and on entertaining any such application shall have power to make all such orders as shall seem just, and to enforce all such orders as in bankruptcy.

189. The court shall have power, for the purpose of any application under these provisions, or for the better execution of any powers given to the court thereby, to summon, and to examine, upon oath or otherwise, the bankrupt, and any party to the deed, and any creditor or person claiming to be a creditor, and any person known or suspected to have any of the estate in his possession, or any person supposed to be indebted to the estate, or whom the court may deem capable of giving any information material to the full disclosure of the debtor's transactions and affairs, or to the carrying into effect the provisions of the deed; and the court may exercise, as to the examination of such persons, and the production by them of such books, papers, deeds or documents as it shall deem requisite, the same powers that are vested in the court with relation to the examination of persons and witnesses, and the production of books, papers, deeds and documents, in matters of bankruptcy.

190. If the resolution aforesaid shall not be duly reported, or if the court shall refuse the application to stay proceedings, or if the deed of arrangement shall not be duly produced, or if upon its production the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no such resolution had been passed; and the court may make all necessary orders for resuming the proceedings in bankruptcy, and the period of time which shall have elapsed between the date of such resolution and the date of the order for resuming proceedings shall not be reckoned in calculating periods of time prescribed by this act.

191. If the bankruptcy be annulled, as herein provided, the order annulling the same shall be filed with the proceedings, and notice thereof shall be given in the London Gazette.

As to trust deeds for benefit of creditors, composition and inspectorship deeds executed by a debtor:

192. Every deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor and his release therefrom, or the distribution, inspection, management and winding-up of his estate, or any of such matters, shall be as valid and effectual and binding on all the creditors of such debtor as if they were parties to and had duly executed the same, provided the following conditions be observed; that is to say,

1. A majority in number representing three fourths in value of the creditors of such debtor whose debts shall respectively amount to ten pounds and upwards shall, before or after the execution thereof by the debtor, in writing assent to or approve of such deed or instrument:
2. If a trustee or trustees be appointed by such deed or instrument, such trustee or trustees shall execute the same:
3. The execution of such deed or instrument by the debtor shall be attested by an attorney or solicitor:
4. Within twenty-eight days from the day of the execution of such deed or instrument by the debtor the same shall be produced and left (having been first duly stamped) at the office of the chief registrar, for the purpose of being registered:
5. Together with such deed or instrument there shall be delivered to the chief registrar an affidavit by the debtor or some person able to depose thereto,

or a certificate by the trustee or trustees, that a majority in number, representing three fourths in value, of the creditors of the debtor whose debts amount to ten pounds or upwards have in writing assented to or approved of such deed or instrument, and also stating the amount in value of the property and credits of the debtor comprised in such deed :

6. Such deed or instrument shall, before registration, bear such ordinary and ad valorem stamp duties as are hereinafter provided :

7. Immediately on the execution thereof by the debtor, possession of all the property comprised therein, of which the debtor can give or order possession, shall be given to the trustees.

193. The date, names and descriptions of the parties to every such deed or instrument, not including the creditors, together with a short statement of the nature and effect thereof, shall be entered by the chief registrar in a book to be kept exclusively for the purposes of such registration. Such entry shall be made within forty-eight hours after the deed shall have been left with the registrar as aforesaid, and a copy of such entry shall be published in the London Gazette within four days after the making of such entry.

Particulars of deed to be entered by the chief registrar. [*Additional forms*, 159.]

Copy of entry to be published in the Gazette. [*Additional forms*, 160.]

194. Every deed, instrument or agreement whatsoever, by which a debtor, not being a bankrupt, conveys or covenants or agrees to convey his estate and effects, or the principal part thereof, for the benefit of his creditors, or makes any arrangement or agreement with his creditors, or any person on their behalf, for the distribution, inspection, conduct, management or winding-up of his affairs or estate, or the release or discharge of such debtor from his debts or liabilities, shall, within twenty-eight days from and after the execution thereof by such debtor, or within such further time as the court in London shall allow, be registered in the court of bankruptcy ; and in default thereof shall not be received in evidence.

Deed to be registered in the court of bankruptcy, and in default, not to be received in evidence.

195. No deed or instrument whatever required to be registered as aforesaid shall be registered unless in addition to the ordinary stamp duty it also be impressed with or have affixed to it a stamp denoting a duty computed at the rate of five shillings upon every hundred pounds, or fraction of an hundred pounds, of the sworn or certified value of the estate or effects comprised in, or to be collected or distributed under, such deed or instrument : Provided, that the maximum of ad valorem duty payable in respect of any such deed or instrument shall be two hundred pounds.

Stamp duties on deeds.

No deed to be registered unless so stamped.

196. Every such deed, on being so registered as aforesaid, shall have a memorandum thereof written on the face of such deed, stating the day and the hour of the day at which the same was brought into the office of the chief registrar for registration.

Memorandum of registration.

[*G. O.*, 12th Oct. 1861, r. 19.]

197. From and after the registration of every such deed or instrument in manner aforesaid, the debtor and creditors, and trustees, parties to such deed, or who have assented thereto or are bound thereby, shall in all matters relating to the estate and effects of such debtor be subject to the jurisdiction of the court of bankruptcy, and shall respectively have the benefit of and be liable to all the provisions of this act, in the same or like manner as if the debtor had been adjudged a bankrupt, and the creditors had proved, and the trustees had been appointed creditors' assignees under such bankruptcy ; and the existing or future trustees of any such deed or instrument, and the creditors under the same, shall as between themselves respectively, and as between themselves and the debtor and against third persons, have the same powers, rights and remedies, with respect to the debtor and his estate and effects, and the collection and recovery of the same, as are possessed or may be used or exercised by assignees or creditors with respect to the bankrupt, or his acts, estate and effects in bankruptcy ; and, except where the deed shall expressly provide otherwise, the court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorized to do if the debtor in such deed had been adjudged bankrupt, and his estate were administered in bankruptcy.

Jurisdiction of the court, and rights and liabilities of the parties, after registration of deed.

[*See additional forms*, 169—172.]

198. After notice of the filing and registration of such deed has been given as aforesaid, no execution, sequestration or other process against the debtor's property in respect of any debt, and no process against his person in respect of any

Protection to debtor after notice of filing, &c. of deed.

[See additional forms, 167; quære, whether it be within the power of the court to make order in this form; see also additional forms, 172.]

Stay of proceedings in bankruptcy after execution of deed, pending time allowed for its registration.

[See additional forms, 164—166.]

Provision in case debtor cannot obtain assent of requisite majority of creditors.

debt, other than such process by writ or warrant as may be had against a debtor about to depart out of England, shall be available to any creditor or claimant, without leave of the court; and a certificate of the filing and registration of such deed under the hand of the chief registrar and the seal of the court shall be available to the debtor for all purposes as a protection in bankruptcy.

199. In case any petition shall be presented for an adjudication in bankruptcy against a debtor after his execution of such deed or instrument as is hereinbefore described, and pending the time allowed for the registration of such deed or instrument, all proceedings under such petition may be stayed, if the court shall think fit; and in case such deed or instrument shall be duly registered as aforesaid, the petition shall be dismissed.

200. If a debtor cannot obtain the assent of a majority in number representing three fourths in value of his creditors, by reason of his being unable to ascertain by whom bills of exchange, promissory notes or other negotiable securities accepted, drawn, made or endorsed by him are holden, or by reason of the absence of creditors in a foreign country, or other similar circumstances, it shall be sufficient if he obtain the consent of a majority in number representing three fourths in value of all his other creditors to such deed or instrument as aforesaid; provided that notice shall have been inserted by or on behalf of the debtor in one or more newspapers published in the county or place at which he shall have carried on business immediately prior to the date of such deed or instrument requiring his creditors to signify their assent to or dissent from such deed or instrument by notice in writing addressed to the trustee or trustees thereof within fourteen days from the insertion of such notice, and that the affidavit or certificate of the trustee or trustees shall state the circumstances of the case, and the same shall be allowed by the court, and provided the deed or instrument be in such form as is expressed in schedule (D.) to this act annexed, which shall vest all the estate and effects of the debtor in the trustees of such deed, and provided that all such other conditions as are hereinbefore required be duly complied with.

As to notices and advertisements:

What notices to be sent by post.

201. All notices by this act or by general order required to be served on any person shall be sent by post addressed to the last known place of business or abode of such person, subject to such regulations as to registration and otherwise as such general orders shall direct; provided that this present clause shall not apply to or affect notices by this act or by any general order required to be personally served.

Proviso.

General orders as to advertisements. [G. O., 19th Nov. 1861.]

202. General orders respecting the form and contents of notices in the London Gazette and otherwise may provide for notices concerning more bankruptcies than one being comprised in one advertisement, and may fix the price to be paid to the printer of the London Gazette for advertisements, which price the said printer is hereby required to receive as such payment.

As to evidence:

Petitions and other proceedings in bankruptcy, and copies, purporting to be sealed with the seal of the court, admissible in evidence.

[See act of 1849, sect. 236.]

203. Any petition for adjudication, or arrangement, adjudication of bankruptcy, assignment, appointment of official or creditors' assignee, certificate, deposition or other proceeding or order in bankruptcy, or under any of the provisions of this act, appearing to be sealed with the seal of any court under this act, or any writing purporting to be a copy of any such document and purporting to be so sealed, shall at all times, and on behalf of all persons, and whether for the purposes of this act or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of such court without any further proof thereof; and no such copy shall be receivable in evidence unless the same appear to be so sealed, except where otherwise in this act specially provided.

Judicial notice to be taken of signature of commissioner or registrar and seal of court. [Vice act of 1849, sect. 237, repealed.]

204. All courts, judges, justices and persons judicially acting, and other officers, shall take judicial notice of the signature of any commissioner or registrar of the courts, and of the seal of the courts, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this act.

205. If any person shall forge the signature of any commissioner, registrar, or of the master or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such commissioner, registrar, master or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under the act of the session of parliament of the eighth and ninth years of the reign of her present majesty, chapter one hundred and thirteen.

Forging signature of commissioner or officer, or seal of court, &c., felony.

[See also act of 1849, sect. 273.]

206. A copy of any petition filed in the court for the relief of insolvent debtors in England, or in any court having jurisdiction for the relief of insolvent debtors, or in bankruptcy, in any of her majesty's dominions, colonies or dependencies, and of any vesting order, schedule, order of adjudication or other proceedings, purporting to be signed by the officer in whose custody the same shall be or his deputy, certifying the same to be a true copy of such petition, vesting order, schedule, order of adjudication or other order or proceedings, and appearing to be sealed with the seal of such court, shall at all times be admitted under this act as sufficient evidence of the same, and of such proceedings respectively having taken place, without any other proof whatever given of the same.

Evidence as to insolvency.

[Vice act of 1849, sect. 239.]

As to affidavits, declarations and affirmations:

207. Any affidavit, declaration or affirmation required to be sworn or made in relation to any matter under this act may be lawfully sworn—

Affidavits, declarations, &c. before whom to be sworn.

1. In England, Scotland and Ireland, before any court acting in matters of bankruptcy, or before any registrar or taxing master thereof, or before any commissioner for administering oaths in chancery or any of the superior courts of common law at Westminster, or before any officer of the high court of chancery, duly authorized to administer oaths in such court, or before a magistrate of the county, city, town or place where any such affidavit shall be sworn:

[As to filing, see G. O., 19th Oct. 1852, rr. 23—25.]

2. In any colony, island, plantation or place under the dominion of her majesty, before any court, judge or person lawfully authorized to take and receive affidavits, affirmations or declarations:

3. In any foreign parts out of her majesty's dominions, before a judge or magistrate, his signature being authenticated by the official seal of the court to which he is attached, or by a public notary, or before a British minister, consul or vice consul:

And every such court, judge, officer or other person is hereby authorized and required to administer the oath upon any such affidavit, or to take such affirmation or declaration; and all courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or signature (as the case may be) of any such court, judge, officer or other person, attached, appended or subscribed to any such affidavit or declaration, or to any other document to be used for the purposes of this act, or of other acts in relation hereto.

Judicial notice of seal or signature thereto.

208. The court of bankruptcy in London, and the district courts of bankruptcy in England, are in like manner authorized and required to administer oaths, or to receive affirmations or declarations, upon any affidavit or declaration or affirmation to be used in any matter of bankruptcy or insolvency under prosecution or hereafter to be prosecuted in any court in Scotland, Ireland, or in any colony, island, plantation or place under the dominion of her majesty; and all such courts shall take judicial notice of any affidavit, declaration or affirmation so sworn or made.

The courts of bankruptcy in England to be auxiliary for the purpose of taking affidavits, &c. to be used elsewhere.

209. No fee shall be payable on the swearing of any oath, or the making of any affirmation or declaration, taken or made in the London court, or in any district court of bankruptcy, in any matter of bankruptcy, arrangement or insolvency within the united kingdom, or in any of her majesty's dominions, colonies or dependencies, and no fee or reward whatever shall be taken or received by any court or magistrate for or in respect of the taking of such oath, or

As to fees on taking oaths, or making declarations, in bankruptcy.

Affidavits by
prisoners.

Bankrupts and
bankrupts' wives
to sign declara-
tion in sched. (E.);
not to exempt
from examination
upon oath.

[See act of 1849, ss.
117, 118, 260, and
s. 246, repealed.]

[Vice act of 1849,
sect. 247, repealed.]

Solicitors of the
court of bank-
ruptcy may prac-
tise as such, and
appear and plead
without counsel.

[G. O., 19th Oct.
1852, rr. 27, 35—
38; C. C. O., 1st
July, 1863, rr.
68—70.]

Power to award
costs.

[Vice act of 1849,
sect. 249.]

Remedies for re-
covering costs.

[G. O., 19th Oct.
1852, rr. 100, 113,
and sched. to rr.
106—113.]

Order for costs
must be registered
under 23 & 24

Vict. c. 38.

[Forms, 247—
256.]

Provisions of
1 & 2 Vict. c.
110, to be appli-
cable to orders of
the lord chan-
cellor and court
of appeal.

[See also act of
1849, sect. 248.]

Provisions of
17 & 18 Vict. c.
34, as to attend-
ance of witnesses
out of jurisdic-
tion, extended to
court of bank-
ruptcy.

[See also act of
1849, sect. 21.]
Courts in Scot-
land to be
auxiliary to the
court in England
in the examina-
tion of witnesses,
&c.

the making of such affirmation or declaration, other than such fee or reward as general orders shall allow.

210. Any affidavit of any prisoner in any of her majesty's prisons or gaols in England, to be used in any matter under this act, may be sworn before the visiting or other justices, or if within twelve hours none shall attend then before the gaoler of such prison or gaol, and every such justice or gaoler is hereby required and authorized to administer the oath upon any such affidavit without fee or reward.

211. All bankrupts shall, and the wives of such bankrupts shall, when so required by the court, make and sign the declaration contained in the schedule (E.) to this act annexed, but such declaration shall not in any case exempt such bankrupt or bankrupt's wife from being examined upon oath, if the court or any creditor shall so require.

As to solicitors :

212. Every solicitor of the high court of chancery, now or hereafter admitted as a solicitor of the court of bankruptcy, may practise as such solicitor in the said court or in any district court, and as to all matters before the commissioners or in chambers may appear and plead without being required to employ counsel; and in case any person not being such solicitor shall practise in the court as a solicitor he shall be deemed guilty of a contempt of court and be liable to all the penalties incident thereto.

As to costs :

213. Any court acting under this act may in all matters before it award such costs as shall seem fit and just; and all costs so awarded shall be recoverable in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered, and the like remedies may be had, upon an order of such court, for costs, as upon a rule of any of the said superior courts for costs; but no such order shall affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until it shall be registered, and, if necessary, re-registered, pursuant to the provisions of the act of the session of parliament of the twenty-third and twenty-fourth years of the reign of her majesty, chapter thirty-eight, any notice of any such order to any such purchaser, mortgagee or creditor in anywise notwithstanding.

As to orders of the lord chancellor and of the court of appeal in chancery :

214. The provisions of the act of the session of parliament of the first and second years of the reign of her majesty, chapter one hundred and ten, so far as the same relate to orders of the lord chancellor, or of the court of review, therein referred to, in matters of bankruptcy, and the powers given by the same act to the lord chancellor and the said court of review in matters of bankruptcy, shall extend to and be applicable to orders of the lord chancellor and of the court of appeal in chancery sitting in bankruptcy under this act.

As to the attendance of witnesses out of the jurisdiction :

215. The provisions of an act passed in the seventeenth and eighteenth years of the reign of her present majesty, chapter thirty-four, intituled "An Act to enable the Courts of Law in England, Ireland and Scotland to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give Effect to the Service of such Process in any Part of the United Kingdom," shall extend to and the powers thereof shall be exercised by the commissioners of the court of bankruptcy.

As to the powers for mutual aid of the courts in England and elsewhere :

216. The court may direct the examination in Scotland of any person for the time being in Scotland, being a person believed to be capable of giving information in any matter in regard to the acts, estate or dealings of any bankrupt or petitioner within the provisions of this act, and the order for such examination may be directed in Scotland to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and such sheriff may, in

like manner as in examinations in any matter in bankruptcy before such sheriff, summon such person to appear before him, at a time and place to be specified in the summons, for examination upon oath, as witness or haver, and to produce any books, papers, deeds or documents called for which may be in his possession or power; and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report either the original books, papers, deeds or documents produced, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as he shall think fit or deem necessary; and in case any person so summoned shall fail to appear at the time and place specified, or appearing shall refuse to be examined or to make the production required, the sheriff shall proceed against such person, as a witness or haver duly cited, and failing to appear or refusing to give evidence, or make production, may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as are allowed to commissioners under appointment from the court of session, and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland. If any objection be stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may dispose of such objection, or, if he think fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

Proceedings for that purpose.
[See additional forms, 173—175.]

217. The court may, in like manner, direct any such examination in Ireland, of any person for the time being in Ireland, being a person believed to be capable of giving such information in any such matter under this act; and such examination in Ireland may be directed to the court of bankruptcy in Ireland, which, for the purpose of such examination, and for the production of books, papers, deeds or documents, shall have the like powers and authorities in all respects as relates to matters within this act as are in the next preceding section given to sheriffs in Scotland, or as might be exercised by such court in the case of a matter within its own jurisdiction.

Courts in Ireland to be auxiliary in like manner.

218. If any person who shall have been duly adjudged or declared bankrupt or insolvent in India, or any of the foreign dominions, plantations or colonies of her majesty, shall be resident or shall be possessed of property in England, Ireland or Scotland, or in any colony, plantation or foreign possession of the crown, it shall be lawful for the assignee, trustee or other representative of the creditors of such bankrupt or insolvent to apply for and obtain an adjudication of bankruptcy, sequestration or insolvency against such person in the court of bankruptcy in England, and in the proper court in Scotland, Ireland and such colony, plantation or foreign possession of the crown respectively, and by virtue thereof the same order and disposition shall be had and taken with respect to the person and property of the bankrupt or insolvent, as would have been if he had been originally adjudged bankrupt or insolvent by the court or tribunal so applied to. Upon such application it shall not be necessary for the assignee, trustee or other representative of the creditors of the person so declared bankrupt or insolvent as aforesaid to give proof of any act of bankruptcy or petitioning creditor's debt, or to produce any other evidence than a duly certified copy, under the seal of the court, of the order or adjudication by which such person was found or adjudged bankrupt or insolvent.

Where debtor who has been adjudged bankrupt, &c. in India or the colonies resides, or has property, in England, &c., power to obtain adjudication in England, &c., and proceedings thereupon.

219. Any order made by the court, or by any court in England, acting under this act, in the course of the prosecution of any matter under this act, shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such matter if the residence or place of business of the debtor had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same; and in like manner orders, interlocutors and decrees made by any court in Scotland for or in the course of any bankruptcy or insolvency shall be enforced in England and Ireland; and orders made by the court in Ireland for or in the course of any such proceedings shall be enforced in England

Orders in England to be enforced in Scotland and Ireland;

and conversely.

and Scotland by the courts of bankruptcy which would respectively have had jurisdiction in any such matter, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a matter within its own jurisdiction.

Courts in England to be in like manner auxiliary to courts in Scotland, Ireland and elsewhere.

[See additional forms, 173—175.]

220. The court and the district court in London, and the district courts in the country, shall in like manner be auxiliary, for all purposes of proof of debt, and for the examination of persons and witnesses upon oath, or for other like purposes, to the courts acting in matters of bankruptcy or insolvency in Scotland and in Ireland, and also to any court acting in such matters in any colony, island, plantation or place under the dominion of her majesty, or to any British judge elsewhere so acting.

As to misdemeanors under this act :

Penalty on persons guilty of misdemeanors herein named.

[Vice act of 1849, sects. as below.]

221. From and after the commencement of this act, any bankrupt who shall do any of the acts or things following, with intent to defraud or defeat the rights of his creditors, shall be guilty of a misdemeanor, and shall be liable, at the discretion of the court before which he shall be convicted, to punishment by imprisonment for not more than three years, or to any greater punishment attached to the offence by any existing statute :

[Sect. 251, part.]

1. If he shall not upon the day limited for his surrender, and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be served upon him personally or left at his usual or last known place of abode or business, and after the notice herein directed in the London Gazette, surrender himself to the court (having no lawful impediment allowed by the court), and sign or subscribe such surrender, and submit to be examined before such court from time to time :

[Sect. 251, part.]

2. If he shall not upon his examination fully and truly discover, to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and how and to whom, and for what consideration, and when he disposed of, assigned or transferred any part thereof, except such part as has been really and bonâ fide before sold or disposed of in the way of his trade or business, if any, or laid out in the ordinary expense of his family, or shall not deliver up to the court, or dispose as the court directs of all such part thereof as is in his possession, custody or power, except the necessary wearing apparel of himself, his wife and children; and deliver up to the court all books, papers and writings in his possession, custody or power relating to his property or affairs :

[Act of 1849, sect. 251, part, sect. 256, clauses 5, 7, 9.]

3. If he shall, after adjudication, or within sixty days prior to adjudication, with intent to defraud his creditors, remove, conceal or embezzle any part of his property to the value of ten pounds or upwards :

4. If, in case of any person having to his knowledge or belief proved a false debt under his bankruptcy, he shall fail to disclose the same to his assignees within one month after coming to the knowledge or belief thereof :

5. If he shall, with intent to defraud, wilfully and fraudulently omit from his schedule any effects or property whatsoever :

[Act of 1849, sect. 251, part, sect. 256, clause 8.]

6. If he shall, after the filing of the petition for adjudication, with intent to conceal the state of his affairs, or to defeat the object of the law of bankruptcy, conceal, prevent or withhold the production of any book, deed, paper or writing relating to his property, dealings or affairs :

[Act of 1849, sects. 252, 256, clauses 1, 2.]

7. If he shall, after the filing of the petition for adjudication, or within three months next before adjudication, with intent to conceal the state of his affairs, or to defeat the objects of the law of bankruptcy, part with, conceal, destroy, alter, mutilate or falsify, or cause to be concealed, destroyed, altered, mutilated or falsified, any book, paper, writing or security, or document relating to his property, trade, dealings or affairs, or make or be privy to the making of any false or

fraudulent entry or statement in or omission from any book, paper, document or writing relating thereto :

8. If, within the like time, he shall, knowing that he is at the time unable to meet his engagements, fraudulently and with intent to diminish the sum to be divided amongst the general body of his creditors, have made away with, mortgaged, encumbered or charged any part of his property, of what kind soever, or if after adjudication he shall conceal from the court or his assignee any debt due to or from him : [Act of 1849, sect. 256, clauses 4, 5.]
9. If, being a trader, he shall, under this bankruptcy, or at any meeting of his creditors within three months next preceding the filing of the petition for adjudication, have attempted to account for any of his property by fictitious losses or expenses : [Act of 1849, sect. 256, clause 6.]
10. If, being a trader, he shall, within three months next before the filing of the petition for adjudication, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, have obtained on credit from any person any goods or chattels with intent to defraud : [Act of 1849, sect. 253; see also sect. 256, clause 3.]
11. If, being a trader, he shall, with intent to defraud his creditors, within three months next before the filing of the petition for adjudication, pawn, pledge or dispose of, otherwise than by bonâ fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for.

222. If it shall at any time appear to any court under this act that the bankrupt has been guilty of any of the offences in the next preceding section set forth, such court shall have and may exercise such jurisdiction, rights, powers and privileges, for the summoning, apprehending, committing, remanding, bailing and otherwise proceeding in respect of such bankrupt, as are exercised by and vested in her majesty's justices of the peace in respect of persons against whom a charge or complaint shall have been made before any one or more of the said justices in respect of any felony or indictable misdemeanor committed within the limits of the jurisdiction of such justice or justices ; and all the provisions of the act of the session of parliament of the eleventh and twelfth years of the reign of her present majesty, chapter forty-two, shall, with such variations as the nature of the case may require, extend and apply to the court, and to the commissioners of the London and other district courts of bankruptcy, and to the judges of the county courts acting in matters under this act, and their proceedings, as well as to justices of the peace and their proceedings.

Jurisdiction and powers of commissioners in proceeding in respect of bankrupt guilty of any of offences herein-before named.

Provisions of 11 & 12 Vict. c. 42, extended to this act.

223. The court may direct that the creditors' assignee, or if there be no creditors' assignee, the official assignee, or any of the creditors of the bankrupt, shall act as the prosecutor in respect of such offence, and shall give to such assignee or creditor a certificate of the court having so directed, which certificate shall be deemed sufficient proof of such prosecution having been directed as aforesaid ; and upon the production of such certificate the costs of such prosecution shall be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction, unless such last-mentioned court shall specially otherwise direct, and when allowed by any such court such sum so allowed shall be ordered by the said court to be paid and borne in all respects in the same manner as the expenses of prosecutions for felonies are now paid and borne, and the same shall be paid and borne accordingly ; and any expenses incurred by such prosecutor, other than those so defrayed in accordance with the next following clause, shall be paid out of the account intituled "The Chief Registrar's Account."

Court may appoint prosecutor.
[See additional forms, 141; C. C. form, 73.]
Costs of prosecution.
[See additional forms, 142.]

224. The court may direct the assignees to lay the papers before the attorney-general (or the solicitor-general during a vacancy in the office of attorney-general) for his direction thereon, either while the bankruptcy is pending before the court or when it has been brought to a conclusion.

Power to court to direct reference to attorney-general.

225. In any indictment or information for any misdemeanor under this act it shall be sufficient to set forth the substance of the offence charged, without alleging or setting forth any debt, act of bankruptcy, petition or adjudication, or any summons, warrant, order, rule or proceeding of or in any court acting under this act.

Indictment.

[Vice act of 1849, sect. 266, repealed; G. O., 19th Oct. 1852, rr. 19, 20.]

Power for court to commit person wilfully disobeying any rule or order of court. [C. C. form, 70.]

Money forfeited under this act, how sued for. [See also larger enactment, unrepealed act of 1849, sect. 275.]

Sections 114, 115, 116 and 117 of 9 & 10 Vict. c. 95, to apply to officers acting in execution of warrants and orders of the courts.

Definition of terms, &c.

[Vice act of 1849, sect. 276.]

"Annulling:"

"Assignees:"

"Bank of England:"

"Bankrupt:"

"Commissioner, &c."

"Court:"

"Court of bankruptcy:"

"Creditor:"

"Creditors present at any meeting:"

"Gaoler:"

"Messenger:"

"Metropolitan district:"

"Oath:"

"Affidavit:"

"Petition for adjudication of bankruptcy:"

Miscellaneous clauses:

226. If any person shall wilfully disobey any rule or order of the court, duly made for enforcing any of the purposes and provisions of this act, the court may, by warrant in the form contained in the schedule (F.) to this act annexed, commit the person so offending to the queen's prison, or to the common gaol of any county, city or place where he shall be found or where he shall usually reside, there to remain, without bail or mainprise, until such court, or the court of appeal in chancery sitting in bankruptcy, shall make order to the contrary.

227. All sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath, affirmation or declaration thereby directed or authorized, may be sued for by the creditors' assignee or trustee, or such other person as the court shall by order direct, in any of her majesty's superior courts of record.

228. The several provisions contained in the one hundred and fourteenth, one hundred and fifteenth, one hundred and sixteenth, and one hundred and seventeenth clauses of the act passed in the ninth and tenth years of her majesty, chapter ninety-five, shall apply to all officers of the court and of the county courts sitting in bankruptcy, who act in execution of warrants and orders of such courts, as if these several clauses had been enacted hereby.

As to the definition and explanation of terms:

229. The terms and words hereinafter enumerated or explained, wheresoever occurring in this act, shall be understood as hereinafter defined or explained, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such definition or explanation; that is to say,

"Annulling" shall mean also "superseding:"

"Assignees" shall mean the assignee of the estate and effects of the bankrupt or petitioner, chosen by the creditors; and until such assignee shall be chosen, or where no such assignee shall exist, shall mean the official assignee:

"Bank of England" shall mean also all branches or agents thereof:

"Bankrupt" shall mean any person who shall have been under any former acts, or who shall be by any court under the provisions of this act, adjudicated bankrupt:

"Commissioner," and "commissioner of the court of bankruptcy," shall include the judge of any county court entitled to act in bankruptcy under this act:

"Court," "the court," "the courts," shall mean the court in London, or any country district court, or any county court acting under this act, according as such several constructions shall be consistent with the context:

"Court of bankruptcy" shall mean her majesty's court of bankruptcy constituted under this act, and the commissioners thereof:

"Creditor" shall mean also any two or more persons being partners, and incorporated and joint stock companies:

"Creditors present at any meeting" shall include creditors who are represented by some person duly authorized by any such creditor in writing, and such authority shall not require a stamp:

"Gaoler" shall include the keeper or governor of any gaol or prison:

"Messenger" shall mean also and include his assistant or assistants, duly authorized by him to act as his deputy or deputies, when acting under order of the court:

"Metropolitan district" shall mean and include every parish the distance whereof as measured by the nearest highway from the general post office in London to the parish church of such parish shall not exceed twenty miles:

"Oath," "affidavit," shall mean and include the declaration or affirmation of any person whom any act of parliament shall have authorized to make such declaration or affirmation in lieu of an oath:

"Petition for adjudication" or "petition in bankruptcy" shall mean any petition by or against a debtor for adjudication of bankruptcy; and where in any act of parliament, instrument, document or other proceeding granted,

executed or made before the commencement of this act mention shall have been or shall be made of any fiat in bankruptcy or commission in bankruptcy, such act, instrument, document or proceeding shall be construed as though such fiat or commission had been a petition in bankruptcy under this act, so far as the circumstances will admit :

“Petitioning creditor” shall mean the creditor who filed the petition for adjudication : “Petitioning creditor :”

“Property” shall mean and include all the real and personal estate and effects of the petitioner or bankrupt within this realm and abroad (except as herein provided), and all the future estate, right, title, interest and trust of such petitioner or bankrupt in or to any real or personal estate and effects, within this realm or abroad, which may revert, descend, be devised or bequeathed or come, and all debts due or to be due to him, before he shall have obtained his discharge : “Property :”

“Prisoner” shall mean any person in actual custody within the walls, rules or liberties of any prison in England for any debt, damages, costs, sum or sums of money, or for any contempt by reason of nonpayment of any sum or sums of money or costs : “Prisoner :”

“Proper county court” shall mean the county court within the district of which the debtor has resided or carried on business during the six months next immediately preceding the time of filing a petition under this act by or against him, or for the longest period during such six months : “Proper county court :”

“Sheriff” shall include sheriff substitute : “Sheriff :”

“Suit” shall include action at law and suit at equity or other proceeding : “Suit :”

For the purposes of this act, all persons shall be deemed traders who prior to the commencement of this act would have been liable to be adjudicated bankrupt under the laws of bankruptcy then in force : “Trader :”

“United kingdom” shall mean the united kingdom of Great Britain and Ireland : “United Kingdom :”

In all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter week, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also. “Computation of time :”

Concluding clauses :

230. The acts and parts of acts set forth in schedule (G.) to this act to the extent to which they are therein expressed to be repealed, and all other acts or parts of acts which are inconsistent with this act, are repealed ; but such repeal shall not affect any proceeding pending, or any right that has arisen or may arise, or any penalty incurred or that may be incurred, in respect of any transaction, act, matter or thing done or existing prior to or at the commencement of this act, under or by virtue of any of the acts or parts of acts repealed. Acts and parts of acts in Sched. (G.) repealed.

231. This act shall not extend to Scotland or Ireland, unless where otherwise expressly provided. Limit of act.

232. This act shall commence and take effect from and after the passing thereof as to the appointment of the officers hereby authorized to be appointed, and as to all other matters and things from and after the eleventh day of October, one thousand eight hundred and sixty-one, and shall be construed, together with so much of “The Bankrupt Law Consolidation Act, 1849,” and “The Bankruptcy Act, 1854,” as remain unrepealed, as one act, and may be cited for all purposes as “The Bankruptcy Act, 1861.” Commencement of act. Short title.

SCHEDULES.

SCHEDULE (A.)

To the persons filling the under-mentioned offices in the court of bankruptcy, the following salaries shall be payable:—

	£
The chief registrar	1,400
The registrars acting in London, each	1,200
The registrars acting in the country, each	1,000
The registrar in attendance upon the chief judge	1,200
The taxing master	1,400
The accountant in bankruptcy	1,500
The registrar of meetings	250

The clerks in the several offices of the accountant in bankruptcy, the chief registrar, the taxing master, the ushers of the court, the clerk and trainbearer, ushers and assistant ushers of the lords justices of the court of appeal in bankruptcy, shall continue to receive the same salaries, and out of the same funds, as if this act had not been passed.

SCHEDULE (B.)

DOCUMENT.	Stamp Duty in lieu of Fees.
Every petition presented to a court of bankruptcy for adjudication of bankruptcy, or for arrangement between any debtor and his creditors(a)	£ 5 s. 0 d.
Every such petition when presented to the London court or to a county court by traders whose debts do not exceed 300 <i>l</i> .	1 0 0
Every order of discharge	1 0 0
Every declaration of insolvency	0 2 6
Every registration of trust deeds	0 10 0
Every summons of judgment debtor or debtor	0 2 6
Every admission of such debtor	0 2 6
Every deposition of good defence	0 2 6
Every bond with sureties	0 5 0
Every application for search for petition or other proceeding	0 1 0
Every application for any meeting in any matter under this act	0 5 0
Every allocatur by any officer of the court for any costs, charges or disbursements,—where such bills of costs shall not exceed 5 <i>l</i> .	0 1 6
Exceeding 5 <i>l</i> . and not exceeding 10 <i>l</i>	0 2 6
" 10 " 20	0 5 0
" 20 " 30	0 7 6
" 30 " 50	0 10 0
" 50 " 100	0 15 0
" 100 " 150	1 0 0
" 150 " 200	1 10 0
" 200 " 300	2 0 0
" 300 " 500	3 0 0
" 500 " 	5 0 0

See G. O., 19th Nov. 1861, and G. O., 22nd May, 1862.

(a) By G. O., 14th Oct. 1861, a petition by a non-trader is to be stamped with a duty of 1*l*.

SCHEDULE (C.)

[Sect. 112.]

Bankruptcy Act, 1861.

(In Bankruptcy.)

Warrant of Committal of Bankrupt or other Party for unsatisfactorily answering, or for refusing to sign his Examination.

Whereas *E. F.*, the said [or *G. H.* of in the county of]
 } was on the day of duly sworn and examined in this court; and
 } the said was again on the day of duly sworn and examined
 in this court, as by the examination and deposition of the said now on the file of
 proceedings in this matter will appear:

And whereas the answers of the said , as now so appearing in said examination and deposition, are unsatisfactory [or the said refused to sign and subscribe his said examination and deposition]:

These are therefore to authorize and require you, immediately upon the receipt hereof, to take into your custody the said and him safely convey to her majesty's prison of and him there to deliver to the governor of the said prison, who is hereby authorized and required to receive the said into his custody there, and him safely keep and detain, without bail, until this court, or the court of appeal in chancery sitting in bankruptcy, shall make an order to the contrary; and for so doing this shall be your sufficient warrant.

Given under the seal of the court this day of 18 .

To and to governor of the said
 prison, or his deputy there.

J. K.,
 Judge.

SCHEDULE (D.)

[Sect. 200.]

This deed, made the day of between *A. B.* [the debtor] and *C. D.* and *E. F.* [the trustees], on behalf and with the assent of the undersigned creditors of *A. B.*, witnesseth that *A. B.* hereby conveys all his estate and effects to *C. D.* and *E. F.* absolutely, to be applied and administered for the benefit of the creditors of *A. B.* in like manner as if *A. B.* had been at the date hereof duly adjudged bankrupt. In witness, &c.

Schedule of Creditors.

SCHEDULE (E.)

The Bankruptcy Act, 1861.

[Sect. 211. See act
 of 1849, sched. W.
 superseded.]

Form of Declaration to be made by the Bankrupt or the Bankrupt's Wife.

I, *A. B.*, the person declared a bankrupt under a petition for adjudication of bankruptcy filed on the day of in the year of our Lord [or I, *C. D.*, the wife of *A. B.*, declared a bankrupt under a petition for adjudication of bankruptcy filed on the day of], do solemnly promise and declare, That I will make true answer to all such questions as may be proposed to me respecting all the property of the said *A. B.*, and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information and belief.

(Signed) *A. B.*
 [or *C. D.*, the wife of the said *A. B.*]

[Sect. 226. See act of 1849, sched. B b, superseded.]

SCHEDULE (F.)

The Bankruptcy Act, 1861.

Warrant against any Person disobeying any Rule or Order of Court.

Whereas by a rule [or an order] of this court, bearing date the day of made for enforcing the purposes and provisions of the Bankruptcy Act, 1861 [or if of any other act hereafter in force relating to the subject matters of this act, or made or entered into by consent for carrying into effect any of such purposes or provisions, alter the recital accordingly], it was ordered, that [&c. &c. as in the rule or order].

And whereas it is now proved that after the making of the said rule [or order], that is to say, on this day of , a copy of the said rule [or order] was duly served on the said personally, and the original rule [or order] at the same time shown to him, but the said then refused [or neglected] to obey the same, and hath not as yet obeyed the said rule [or order]

These are therefore to will, require and authorize you immediately upon receipt hereof to take into your custody the body of the said *A. B.*, and him safely to convey to her majesty's gaol [or prison] of [or called], and him there to deliver to the keeper of the said prison, together with this precept, and the keeper of the said prison is hereby required and authorized to receive the said *A. B.* into his custody, and him safely to keep and detain, without bail or mainprise, until this court, or the court of appeal in chancery sitting in bankruptcy, shall make order to the contrary ; and for so doing this shall be your sufficient warrant.

Given under my hand and the seal of the court at the court of bankruptcy, London, this day of in the year of our Lord one thousand eight hundred and .

A. B., (L.S.)
Judge.

To or his assistant, and to the keeper of her majesty's prison [or gaol] of [or called], or his deputy there.

[Sect. 230.]

SCHEDULE (G.)

ACTS and PARTS of ACTS repealed.

Date of Act.	Title.	Extent of Repeal.
1 & 2 Vict. c. 110 ..	An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England.	The whole, except ss. 1 to 22, both inclusive.
5 & 6 Vict. c. 116 ..	An Act for the Relief of Insolvent Debtors.	The whole.

SCHEDULE (G.)—*continued*.

Date of Act.	Title.	Extent of Repeal.
7 & 8 Vict. c. 96	An Act to amend the Laws of Bankruptcy, Insolvency and Execution.	Sections 1 to 44, both inclusive, and Sections 49 to 53, both inclusive.
10 & 11 Vict. c. 102..	An Act to abolish the Court of Review in Bankruptcy, and to make Alterations in the Jurisdiction of the Court of Bankruptcy and Court for Relief of Insolvent Debtors.	The whole, except s. 4.
12 & 13 Vict. c. 106..	An Act to amend and consolidate the Laws relating to Bankrupts.	Sections 7, 8, 10, 14, 15, 16, 18, 20, 25, 26, 28, 36, 37, 39, 44, 45, 46, 48, 52, 54, 58, 59, 60, 61, 62, 69, 70, 72, 73, 75, 90, 91, 92, 93, 94, 96, 160, 183, 185, 187, 188, 189, 193, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 209, 211 to 231, both inclusive, Sections 237, 239, 243, 244, 245, 246, 247, 249, 251, 252, 253, 255, 256, 257, 258, 259, 261, 266, 270, 271, 276 and 278, and such other parts of the said act as may be inconsistent with this present act.
15 & 16 Vict. c. 77 ..	An Act to abolish the Office of Lord Chancellor's Chief Secretary of Bankrupts, and to regulate the Office of Chief Registrar of the Court of Bankruptcy.	Section 10.
17 & 18 Vict. c. 119 ..	An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts.	Sections 3, 11, 12, 13, 14, 15, 20, 21, 22, 25, 26, 27.

[Sect. 106.]

SCHEDULE (H.)

Medical Certificate.

(a) *Set forth the qualification entitling the person certifying to practise as a physician, surgeon or apothecary, ex. gra.:—Fellow of the royal college of physicians in London, licentiate of the apothecaries' company, or as the case may be.*

(b) *Physician, surgeon or apothecary, as the case may be.*

(c) *Lunatic or an idiot, or a person of unsound mind.*

(d) *Here state the facts.*

(e) *Here state the information, and from whom.*

I, the undersigned,

being a (a)

and being in actual practice as a (b)

hereby certify, that I, on the

the gaol of

day of

at

in the county of

separately from any other medical practitioner,

personally examined

a prisoner for debt in the said gaol, and that the said

is a (c)

and a proper person to be taken charge of

and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:

1. Facts indicating insanity observed by myself (d).

2. Other facts (if any) indicating insanity, communicated to me by others (e).

(Signed)

Name,

Place of abode.

Dated this
hundred and

day of

one thousand eight

RULES AND ORDERS.

*Rules and Orders made in pursuance of "The Bankrupt Law Consolidation Act, 1849, 12 & 13 Vict. c. 106, s. 8.
19 October, 1852.*

[These orders are re-enacted by General Order, 12th October, 1861, r. 36.]

WITH respect to the several matters hereinafter mentioned—IT IS ORDERED as follows, that is to say:—

Definition of Terms.

1. That all words and expressions used in these rules or orders shall be construed in conformity with the interpretation clause (section 276) (a) of "The Bankrupt Law Consolidation Act, 1849."

Definition of terms, &c.

Petition for Adjudication of Bankruptcy.

2. Every petition for adjudication of bankruptcy shall be fairly written or printed on parchment in the form given in the Schedule M. or O. of "The Bankrupt Law Consolidation Act, 1849" (as the case may be), and no alterations, interlineations or erasures shall be permitted without leave of the court; except so far as the same may be necessary, in order to adapt the printed form to the circumstances of the particular case.

Petition for adjudication of bankruptcy to be on parchment.
[See G. O., 12th Oct. 1861, scheds. 1, 2.]

3. All petitions for adjudication and the affidavits in support of the same shall be carefully examined by the chief registrar in London, or by one of the registrars in the country districts before they are filed, and any petition or affidavit not being in conformity with the provisions of "The Bankrupt Law Consolidation Act, 1849," and these orders shall be rejected, subject, however, to an appeal to the commissioner of the day in London; or to the commissioner in attendance in the country.

Petition and affidavit in support thereof to be examined by registrar before filing.

4. The chief registrar shall carefully search whether any fiat in bankruptcy or petition for adjudication of bankruptcy has been issued or filed against or by the same person or persons, alone or jointly with any other person or persons, and shall endorse the result of such search on the petition previous to transmitting the same to the registrar of the day. Similar searches and endorsements shall be made by the registrar in attendance in the country.

Search to be made for previous fiat or petition.

5. That in case two or more persons shall apply at the same time to present petitions to the court in London, or to a district court, for adjudication of bankruptcy against the same person, and shall both be prepared to prosecute the same immediately, it shall be determined by lot which petition shall first be received and filed, but if one of such persons only is prepared to prosecute his petition immediately, such person shall be preferred; and in case one of such petitions shall be by the debtor or debtors, then the other petition (or one of the other petitions, to be ascertained as above) shall be preferred; and no subsequent petition for adjudication of bankruptcy against the same trader, either alone or jointly with any other person or persons, shall be proceeded with further than receiving and filing the same, until after the dismissal of the first or other petition, or the expiration of the time allowed for prosecuting the same.

Where two or more petitions, receipt of one by lot.

6. That if any creditor shall petition for adjudication of bankruptcy, and shall neglect to prosecute his petition within the time limited for that purpose,

Second petition by creditor neglecting to prosecute a former petition.

(a) Repealed by the Act of 1861.

no subsequent petition for adjudication of bankruptcy against the same trader or traders, or any of them, either alone or jointly with any other person or persons, shall be presented by the same creditor without the special leave of the court to which the previous petition was addressed.

7. That every petition for adjudication of bankruptcy in London, whether presented by a creditor or by the trader himself, shall forthwith after the filing thereof in the office of the chief registrar be allotted by ballot by the registrar of the day, in the presence of a commissioner, and in the presence of the solicitor acting in the matter of such petition, to one of the commissioners of the court, and such allotment shall be entered in a locked book to be kept for that purpose, to which book each registrar and commissioner shall have a key; and every such petition in any district court where there is more than one commissioner shall when filed be allotted in like manner by ballot, and entered in a locked book to be kept as aforesaid.

8. In case of the absence of any commissioner the registrar alone, and in case of the absence of any registrar the commissioner alone, may, but in either case in presence of the solicitor, proceed to ballot any petition, endorsing on such petition the reason for his so proceeding.

9. That where a petition for adjudication of bankruptcy, filed either by a creditor or a trader, shall have been dismissed, or shall not have been prosecuted within the time limited, every second or subsequent petition presented to the same court for adjudication of bankruptcy against the same person or persons, or any of them, and either alone or jointly with any other person or persons, shall be allotted to and prosecuted before the commissioner who shall have acted in the matter of the first petition, or to whom the same shall have been balloted.

10. Whenever any doubt shall arise as to the allotment of any petition in London, the same shall be determined by the senior commissioner, or in his absence by the commissioner of the day; and in the country by the commissioner in attendance.

11. The petitioning creditor's debt shall be carefully investigated previous to the adjudication, and all securities held by him shall at the same time be exhibited to the commissioner, together with a debtor and creditor account between the petitioning creditor and the intended bankrupt, which shall be filed with the proceedings, unless otherwise directed by the court.

12. The personal attendance of the petitioning creditor, and of the witness or witnesses to prove the trading and act of bankruptcy, upon the opening of the petition for adjudication, may be dispensed with, on special cause proved to the satisfaction of the court.

13. Except in case of emergency, all applications for adjudication in London shall be made to the commissioner of the day in his private room previous to the public sitting of the court.

Disputing Adjudication of Bankruptcy. Section 104.

14. That if any person adjudged bankrupt intend to show cause against the validity of such adjudication, he shall cause notice in writing of such his intention to be served upon the petitioning creditor, or his solicitor, and upon the registrar, two clear days at least before the day appointed by the court for showing cause against such adjudication, and in such notice shall state which of the following matters, namely, the petitioning creditor's debt or debts, the trading, or act or acts of bankruptcy he intends to dispute.

15. That after serving such notice of his intention, he shall on application be forthwith furnished with the names of the witness or witnesses deposing to the matter in dispute, and shall, on payment for the same, have a copy of the deposition or depositions, or any of them, as the court in its discretion may think fit.

16. That on the appearance to show cause against the validity of the adjudication, the petitioning creditor's debt, trading and act of bankruptcy, or such of those matters as the person adjudged bankrupt shall have given notice that he intends to dispute, shall again be proved *vivâ voce*, unless otherwise directed

Allotment of petitions for adjudication of bankruptcy in London. See section 94.

[*Repealed. See G. O., 12th Oct. 1861, r. 1.*]

In district court.

If commissioner absent, registrar may ballot.

[*Repealed. See G. O., 12th Oct. 1861, r. 1.*]

Second or subsequent petition for adjudication to be prosecuted before the same commissioner.

[*Virtually re-enacted. G. O., 12th Oct. 1861, r. 1.*]

Question on allotment of petition, how determined. [*Falls along with r. 7, supra.*]

Investigation of the petitioning creditor's debt.

[*See additional forms, 19.*]

Personal attendance of petitioning creditor, &c., how to be dispensed with.

[*See additional forms, 17, 18.*]

Applications for adjudication in London, when to be made.

Notice to dispute adjudication. 12 & 13 Vict. c. 106, s. 104.

[*See additional forms, 24.*]

Names of witnesses to be given, &c.

Showing cause against adjudication and grant of further time.

[*See additional forms, 25.*]

by the court, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matter shall not be present for cross-examination, and further time shall be desired to show cause, the court shall, if it think the application reasonable, grant such further time as it may think fit.

Jurisdiction of the Court of Bankruptcy, under Section 12 : Motions and Petitions, and Practice thereon.

17. That (unless the court shall in any particular case otherwise direct) all applications to the court in the exercise of its primary jurisdiction by virtue of "The Bankrupt Law Consolidation Act, 1849," shall be by way of motion, supported by affidavit, upon hearing which the court shall make such order therein as shall be just; but in cases in which any other party or parties than the applicant are to be affected by such order, no such order shall be made unless upon the consent of such person or persons, duly shown to the court; or upon proof that notice of the intended motion and copy of the affidavit in support thereof has been served upon the party or parties to be affected thereby, four clear days at least before the day named in such notice as the day when the motion is to be made: provided, however, that the court may, if it shall think fit, in any case where the party or parties to be affected by the order, or any of them, shall not have been duly served with a notice of the motion for such order, make an order calling upon the party or parties to be affected thereby to show cause, at a day to be named by the court in such order, why such order should not be made.

Mode of application to the court under 12 & 13 Viet. c. 106, s. 12.

18. That every order to show cause shall be served upon the party or parties to be affected thereby four clear days at the least before the day appointed for showing cause.

Service of order to show cause.

19. No warrant for the commitment of any person, pursuant to section 266 of "The Bankrupt Law Consolidation Act, 1849," for disobeying any rule or order of the court, shall be issued, unless notice of the intended motion for such warrant shall have been served personally upon the person to be committed two clear days at the least before the day of hearing such motion; or unless an order to show cause why such warrant should not be issued shall have been personally served upon such person four clear days at the least before the day named in such order for showing cause: provided, however, that in cases in which it shall be made to appear to the court, that the person intended to be committed is keeping out of the way, and cannot be personally served with the notice of motion, or of the order to show cause, it shall be lawful for the court to make an order directing substituted service of the notice, or order to show cause, as may be best suited to the circumstance of the case, and service of such notice, or order to show cause, according to the directions of such order, shall be deemed to be as effectual as if such service had been made personally.

Previous to issuing warrant of commitment, under sect. 266, for disobeying any rule or order of court, notice of motion or order to show cause to be personally served, &c.

20. In cases in which personal service of any notice of motion, or of any rule or order of the court, is required, the same shall be effected, in the case of a notice of motion, by delivering to the party or parties to be served, and each of them, a duplicate of the notice of motion; and in the case of a rule or order, by delivering to the party or parties to be served, and each of them, a true copy of the order or rule, at the same time showing to him or them the original order or rule of the court.

Service of notice of motion, or order to show cause.

21. That, except where otherwise provided or required by the statute, or by these rules, every petition presented to the court of bankruptcy in London or in the country, shall be signed by the petitioner or petitioners: Provided always, that in the case of partnership or absence of any petitioner or petitioners from the united kingdom, the signature of one of the partners, or of the party presenting the same on behalf of the person so absent, shall be sufficient, and the signature of each person signing the same shall be attested by the solicitor actually presenting the petition, or by some other solicitor, who shall state himself in his attestation to be the solicitor or agent of the solicitor of the party signing in the matter of the petition.

Signature and attestation of petitions in general.

To be entered
with the regis-
trar.

22. That every such petition presented to the court shall be entered with the registrar of the court to which the same is presented, and the order directing the attendance thereon shall be signed by the registrar, and under the seal of the court; and the original petition, when served, shall be returned to the registrar on or before the hearing, and filed of record. And it shall not be necessary to recite such petition at length, but only the prayer thereof, in any order pronounced by the court thereon.

Affidavits to be
filed.
[See r. 34, post.]

23. That every affidavit to be used in obtaining, supporting or opposing any petition or motion, or order for showing cause for or against any order or rule of court, shall be filed with the registrar of the court having the custody of the proceedings to which the same relates, two clear days at the least before the day appointed for the hearing; and no affidavit in reply or in rejoinder is to be used except by leave of the court.

No affidavit in
reply.

Affidavits to be
indorsed by the
registrar, with
the day when left
for filing.

24. That the registrar, upon any affidavit being left with him to be filed, do indorse the same with the day of the month and year when the same was so left, and do forthwith file the same with the proceedings to which the same relates.

Affidavits to be
intituled.

25. That no affidavit be filed unless the same is properly intituled in the court and matter in which the same is to be used, and that, after any affidavit is left with a registrar to be filed, the same is on no account to be delivered to any person whatever, except by order of the court.

Hearing motions
and petitions.

26. Except in cases of emergency all motions shall be made, and all petitions heard, before the commissioner acting in the particular bankruptcy to which the matter relates, or the commissioner acting for him in his absence, and in London, on the day on which he sits as commissioner of the day, and at the sitting of the court, and in the order set down in the registrar's diary, unless the commissioner shall otherwise direct.

Motions, order of
making.

27. Motions made by the bar shall be heard according to the right of precedence, and motions made by attorneys in the order in which they have been set down in the registrar's diary previous to the public sitting of the court.

Note of motion to
be delivered to
the registrar.

28. A short note of every motion shall be delivered to the registrar previous to the public sitting of the court, specifying the bankruptcy or other matter to which the same relates, the name of the party on whose behalf the same is made, the name and residence of the attorney of such party (and of the counsel if the same be made by counsel), the name of any party, and the name and residence of his attorney, on whom any notice of such motion has been served.

Deposit of Costs on Appeal. Section 12.

Deposit on ap-
peal. 12 & 13
Vict. c. 106, s. 12.

29. That at or before the time of entering an appeal against a decision or order of the court of bankruptcy, the party intending to appeal shall (in any case not otherwise specially provided for) deposit with the chief registrar such sum, not being less than 10*l.* and not exceeding 40*l.*, as the commissioner, whose order or decision is appealed from, or some other commissioner of the same court, shall direct, to satisfy so far as the same may extend any costs that the appellant may be ordered to pay, and in the absence of any directions of a commissioner as to the amount of deposit, the sum of 20*l.* shall be so deposited. If it shall appear that there are several respondents in separate interests, the commissioner, if he shall think fit, may order a separate deposit as to every such respondent.

Allowance of Amendments.

Amendments
may be allowed
by leave of the
court.

30. That in any proceeding before the court, the court, if it think fit so to do, may allow amendment, in any particular or particulars in the judgment of the court not material to the merits of the case, to be forthwith made, on such terms as to re-swearing (in case of affidavits when necessary) and as to payment of costs, or both payment of costs and postponement, or otherwise, as the court shall think reasonable.

Removal of Commissions and Fiats issued on or before the 11th November, 1842.
Section 22.

31. [Obsolete. Related to transfer of commissions and fiats into court. 12 & 13 Vict. c. 106, s. 22.]

32. [Obsolete. Provided for division of certain transferred commissions and fiats amongst commissioners in London.]

With respect to the Chief and other Registrars.

33. That the chief registrar's office shall be at the court of bankruptcy in London, and shall be kept open daily, throughout the year, from ten till four o'clock (Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter week, and any day appointed for a public fast or thanksgiving, excepted).

Chief registrar's office.

34. That all petitions, affidavits and other documents directed to be filed, except the affidavits mentioned in Rule 23, shall be filed in the office of the chief registrar at the court of bankruptcy in London, if relating to any bankruptcy or other matter under this act prosecuted in London, or with the registrar or registrars of the district court in which any bankruptcy or other matter under this act is prosecuted in the country.

Affidavits to be filed.

35. That a roll or book shall be kept by the chief registrar, in which shall be enrolled the names of all attorneys and solicitors entitled to practise in the court of bankruptcy.

Roll of attorneys.
[See Act of 1861, s. 212.]

36. That the chief registrar shall keep a book in alphabetical order, for the purposes after mentioned, and the same shall be publicly kept in the court of bankruptcy in London, to be there inspected by any enrolled attorney or solicitor. And that every attorney or solicitor enrolled in the court of bankruptcy shall, at the time of his signing the book or roll mentioned in Rule 35, enter in such alphabetical book his name and place of abode or business where he may be served with notices, summonses, orders and rules, in matters depending in the court; and as often as any attorney or solicitor shall change his place of abode or business, he shall make the like entry thereof in the said book; and all notices, summonses, orders and rules, which do not require personal service, shall be deemed sufficiently served on such attorney or solicitor if a copy thereof shall be left at the place last entered in such book, with any person resident at or belonging to such place; and if any attorney or solicitor shall neglect to make such entry, then the fixing up of any notice, or the copy of a summons, order or rule, for such attorney or solicitor, in the office of the chief registrar, shall be deemed as effectual and sufficient as if the same had been served at such place of residence or business as aforesaid.

Book, with chief registrar in London, for names and places of abode or business of enrolled attorneys and solicitors, where they may be served with notice, &c.
[See Act of 1861, s. 212.]

37. That a like alphabetical book of names and residences shall be kept by the senior registrar of every district court in the country having two registrars, and by the registrar of every district court in the country where there is only one registrar, in which book every attorney and solicitor resident in and usually practising in such district respectively shall, in like manner and subject to the same regulations, enter his name and place of abode and business.

Like book in district courts in the country.

38. That in case the place of abode or business of any attorney or solicitor be not within a circuit of five miles from the general post-office in London, or within five miles of the place appointed for the sittings of any district court of bankruptcy in the country districts, such attorney or solicitor shall appoint, and enter in the said alphabetical book, some convenient place within a three miles circuit of the general post-office, if he be an attorney or solicitor usually practising in the court of bankruptcy in London, or within three miles of the place of sitting of the district court, if usually practising in any country district, where such notices, summonses, orders and rules as aforesaid may be served on him, subject to the regulations aforesaid.

Substituted place for serving notices, &c., on attorneys and solicitors, when their place of abode or business is above a certain distance, &c.

39. All existing commissions and fiats, when transferred to the court of bankruptcy in London, shall be duly entered in the chief registrar's office, in books to be kept for that purpose, and in the country in a book to be kept by the senior registrar of every district court having two registrars, and by the registrar, where there is only one.

Existing commissions and fiats, when transferred, to be entered in books, &c.

Transmission of minutes of proceedings from the country districts. Sect. 23.

40. That, in addition to the minutes required to be transmitted to the chief registrar by sect. 95 of "The Bankrupt Law Consolidation Act," the registrars in the country districts (or when there are two registrars, one of them) shall transmit to the chief registrar, between the first and fifth day of each month, a return of the proceedings of such court for the last preceding month, in the form set forth in schedule 26, to these orders annexed; and the chief registrar shall cause the same to be minuted in a book to be entitled the "Supplemental Docket Book."

Of the Proceedings.

Proceedings to be on parchment or paper of uniform size, &c.

[Amended. G. O., 12th Oct. 1861, r. 11.]

Proceedings to remain of record in the court, and shall not be removed without special direction.

A registrar to attend in each court and to take minutes, &c.

Registrar not to sit for commissioner without his request in writing.

Memorandum of advertisement in Gazette, &c., when in lieu of copy of Gazette.

41. All proceedings in the court shall be written or printed on parchment or paper of one uniform size, that is to say, on sheets of sixteen inches in length and ten inches in breadth, without unnecessary alterations or interlineations; and no erasures shall be permitted, except by leave of the court, on special cause shown; in which case any proceedings, though on paper or parchment not of the said size, may be received and filed.

42. All proceedings shall remain of record in the court, and shall not be removed for any purpose whatever, except by special direction thereof, or of the lord chancellor.

43. A registrar shall attend in each court, at such times as the commissioner shall direct, to take and draw up minutes of all proceedings, and such registrar shall have the charge of all such proceedings, under the superintendence of the chief registrar.

44. Except in cases of emergency, the nature whereof shall be entered on the proceedings, no registrar shall sit or act for any commissioner, under sect. 27, without the express request, in writing, of such or some other commissioner.

45. In lieu of attaching a copy of the Gazette to the proceedings in each bankruptcy or other matter, the registrar shall make a memorandum of the advertisement in the Gazette, and of the date thereof, with proper reference to the file to facilitate search; and one copy of every Gazette shall be kept in the office of the chief registrar.

Office Copies of Proceedings under Sections 53 and 232.

Charge for office copies under sect. 232.

Office copies. 12 & 13 Vict. c. 106, s. 53.

46. That all office copies of fiats, petitions or other proceedings, books, papers and writings, or any parts thereof, provided for any bankrupt or arranging debtor, or for any creditor of a bankrupt or arranging debtor, or attorney of any such bankrupt, debtor or creditor, shall be charged and paid for at the rate directed by the 53rd sect. of "The Bankrupt Law Consolidation Act, 1849," with respect to the office copies therein mentioned.

47. That all office copies shall be made by the chief registrar or registrars, or by the messenger or usher of the court, as the court shall appoint, and shall, except as to figures, be fairly written at length, and shall be sealed with the seal of the court, and delivered out by the person appointed, without any unnecessary delay, and in the order in which they shall have been bespoken.

Duties of the Master.

Bills to be taxed by the master. 12 & 13 Vict. c. 106, s. 37.

48. That the bills to be taxed by the master shall be all bills of costs, charges, fees and disbursements in matters of bankruptcy, before the lord chancellor, the lords justices acting in bankruptcy (as are now taxed by the said master), and the court of bankruptcy in London, and all other taxable bills in other matters in which the court of bankruptcy in London may exercise jurisdiction, and such taxable bills as may be specially referred to him for taxation by any district court of bankruptcy (a), subject to the revision of the court.

Office of the master.

49. That the office of the master shall be at the court of bankruptcy in Basinghall street, and shall be open for the transaction of business daily, from

(a) Or county court. See Act of 1861, s. 14.

ten o'clock in the forenoon until four o'clock in the afternoon, except on such days and during such periods as the office of the accountant in bankruptcy shall be closed by any order of the lord chancellor, or by any general rule or order of the court.

50. That the business of the master shall be transacted by him in person.

51. That all copies of bills of costs lodged in the master's office shall be made, examined and delivered out by the clerk who has heretofore made, examined and delivered out the same.

52. That in the country districts all bills of costs, charges, fees and disbursements (except such as may be specially referred to the master) shall be taxed by one of the registrars.

Business of the master to be transacted by him in person.

Copies of bills.

Taxation of bills, &c., in the country districts.

Proof of Debts.

53. That every sitting held for making a dividend of a bankrupt's estate shall be a sitting for proof of debts, and the notice of such sitting in the London Gazette shall express that debts may be proved at such sitting.

54. That any separate creditor of any bankrupt shall be at liberty to prove his debt under any adjudication of bankruptcy made against such bankrupt jointly with any other person or persons. And under every such adjudication distinct accounts shall be kept of the joint estate and also of the separate estate or estates of each bankrupt, and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors. And in case there shall be an overplus of the separate estate, such overplus shall be carried to the account of the joint estate. And in case there shall be an overplus of the joint estate, such overplus shall be carried to the account of the separate estates of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate. And that the cost of taking such accounts be paid out of the joint and separate estates respectively as the court shall direct.

Debts may be proved at sitting for dividend.

See ss 164 and 187.

[The last of which is repealed. See also Act of 1861, s. 146.]

Separate debts may be proved under joint petition, and distinct accounts to be kept of joint and separate estate; application thereof in cases of overplus.

[See sect. 140.]

Taking Accounts of Property Mortgaged or Pledged, and of the Sale thereof.

55. That upon application (which shall be in manner prescribed by Rule 17) by any person claiming to be a mortgagee of, or to have security over any part of, the bankrupt's estate or effects real or personal, and whether such mortgage or security shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the court will proceed to inquire whether such person is such mortgagee, or is entitled to such security, and for what consideration and under what circumstances, and if it shall be found that such person is such mortgagee, or is entitled to such security, and no sufficient objection shall appear to the title of such person to the sum claimed by him, under such mortgage or security, the court will then proceed to take an account of the principal, interests and costs due upon such mortgage or security, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use, in case he shall have been in possession of the property over which the mortgage or security shall extend, or any part thereof, and the court will then cause notice to be given in the London Gazette, and in such other of the public papers as it shall think fit, when and where and by whom and in what way the said premises or property, or the interest therein so mortgaged, or over which the security shall so extend, are to be sold, and that such sale be made accordingly, and that the assignees (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application.

Directions for taking accounts, and sale.

56. That all proper parties shall join in the conveyance to the purchaser (where necessary) as the court shall direct.

Conveyance where necessary.

57. That the monies to arise from such sale be applied in the first place in payment of the costs, charges and expenses of the assignees, of and occasioned by the application to the court, and of and attending such sale, and then in payment and satisfaction of what shall be found due to such mortgagee, or person so having security, for principal, interest and costs, and that the surplus

Application of proceeds.

Proof by creditor for deficiency.

of the said monies (if any) be paid to the assignees. But in case the monies to arise from such sale shall be insufficient to pay and satisfy what shall be so found due to such mortgagee or person so having security, then he shall be admitted a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend or dividends then already made.

All parties to be examined.

58. That for the better making such inquiry and taking such account, and making a title to the purchaser, all parties be examined by the court upon interrogatories or otherwise as it shall think fit, and produce before the court upon oath all deeds, papers and writings in their respective custody or power, relating to the estate or effects of the bankrupt, as the court shall direct.

Bankrupt's Balance Sheet.

Bankrupt's balance sheet must be filed in duplicate ten days before the day appointed for last examination; last examination will not otherwise be passed; office copies of balance sheet, or any part, to be provided by proper officer. Sect. 160.

59. The bankrupt's balance sheet must be filed in duplicate with the registrar of the court ten days at least before the day appointed for the last examination of the bankrupt, or the adjournment day thereof for that purpose (one copy for the official assignee, and the other for the proceedings); and the last examination of the bankrupt shall in no case be passed by the court unless his balance sheet shall have been duly filed as aforesaid; office copies of the balance sheet, or such part thereof as shall be required, shall be provided by the proper officer.

Advertisement of Certificate and transmission to Chief Registrar, and Appeal against Allowance thereof (a).

Advertisement of certificate. 12 & 13 Vict. c. 106, s. 199.

60. That the notice of the allowance of a certificate of conformity shall be advertised by the messenger of the court in the London Gazette ten days or more before the expiration of the time allowed by the statute for entering an appeal against the allowance, and such notice shall specify the class of the certificate and the time of suspension (if any), and the conditions (if any) annexed to the allowance: and no certificate of conformity shall be delivered to the bankrupt, except on production of the Gazette containing such advertisement.

Certificate to be transmitted to chief registrar.

61. That after the expiration of the time allowed for entering an appeal against the allowance of a certificate, and on being satisfied that no appeal has been entered, the registrar of the court shall deliver such certificate to the bankrupt, and shall certify the allowance to the chief registrar.

Deposit of costs before application for recall of certificate. Sects. 203, 206, 207; and see sect. 12.

62. That before any application for a recall of a certificate, and before or at the time of entering any appeal against the judgment of the court of bankruptcy for the allowance of a certificate, or for the refusal, the withholding, or the class of a certificate, or otherwise with respect to a certificate, the creditor, or assignee or bankrupt intending to appeal, shall deposit with the chief registrar such sum not being less than 10*l.* and not exceeding 40*l.*, as the commissioner whose judgment is appealed from, or some other commissioner of the same court acting for him, shall direct, in order to satisfy (so far as the same may extend) any costs that the appellant may be ordered to pay, and in the absence of any direction of a commissioner as to the amount of deposit, the sum of 20*l.* shall be so deposited.

Notice to the court of an appeal. Sect. 206.

63. That at the time of entering an appeal against the judgment of the court for the allowance of a certificate, or for the refusal, the withholding, or the class of a certificate, notice thereof shall be given to the court by leaving the same in writing with the chief registrar, who shall forthwith enter in the certificate book the time and nature of every such appeal, and shall afterwards enter in the said book the date and substance of any order made in the said appeal that may be produced before him.

Affidavits in support to be filed with petition of appeal.

64. That all affidavits to be made in support of petitions of appeal against the allowance, refusal or withholding of any bankrupt's certificate or the class thereof shall be filed at the time of the filing of such petition of appeal.

(a) Though certificates are abolished, similar rules are followed with regard to orders of discharge under the Act of 1861, s. 157 *et seq.*

Audits.

65. Every bill of fees and disbursements, and charges of any solicitor or attorney, or messenger, under any commission, fiat or petition for adjudication of bankruptcy, incurred prior to any sitting for an audit, shall be delivered to the registrar for taxation five days at least before the day appointed for such sitting; and in default thereof, if such sitting shall be adjourned by reason of such default, such solicitor or attorney or messenger shall pay the costs occasioned by the adjournment, and the amount thereof shall be deducted from the amount of such bill; and no money shall be paid to any solicitor or attorney, or messenger, on account of any fees or disbursements or charges of any bill, until such bill shall have been taxed.

Bills of solicitors and messengers to be delivered to registrar for taxation five days before the audit; if audit adjourned by default of solicitor or messenger in that behalf, the solicitor or messenger to pay the costs of the adjournment: it has been taxed.

no sum to be paid to any solicitor or messenger on account of his bill until it

66. The audit account of the official assignee, or of any creditors' assignee or assignees, shall be made out in the ordinary form of a debtor and creditor account, each item thereof being entered according to its date, and a name, date and proper explanation given to such item; and a duplicate of such account shall be sent by the official assignee to the solicitor two days at least prior to the day appointed for the auditing of such account, subject to the power of the commissioner to require an account, digested under proper heads, to be annexed to the audit account, if he shall think proper.

Audit account of official assignee or creditors' assignee to be made out in a particular form, to be uniform in all the courts. [See Act of 1861, ss. 119, 129.]

67. At every audit the debtor and property book exhibited to the court by the official assignee shall be carefully examined and compared with the debts and property collected, as stated in the audit paper, and the cause of any monies remaining uncollected shall be ascertained, and a minute thereof made and filed with the proceedings; and all persons appearing to be indebted to the bankrupt's estate shall be forthwith summoned and examined in that behalf upon oath, and the examination so taken shall be filed with the proceedings; and such directions shall be given by the court as to any further proceedings thereupon as to the court shall seem fit.

At every audit the debtor and property book of the official assignee to be examined, and compared with audit paper; cause of monies remaining uncollected to be ascertained, and a minute

thereof made, and filed with proceedings; the debtors to be summoned and examined on oath, and examination filed; the court to give directions as to further proceedings against such debtors.

Summoning of Trader. Sections 78 to 86.

68. That the particulars of demand and notice under "The Bankrupt Law Consolidation Act, 1849," and specified in Schedule G. to the said act annexed, shall, where the debt is claimed to be due to a person or persons not in partnership, be signed by or in the christian name and surname of every such person, adding after his signature his description, residence or place of business, and shall, where the debt is claimed to be due to a partnership firm, be signed by or in the name of one of the partners on behalf of himself and partner or partners, adding after such signature the style or firm of partnership and place of business as follows; (that is to say,) John Thompson for self and partners, trading under the style or firm of —, at —, in the county of —.

Summoning of trader debtors. 12 & 13 Vict. c. 106, ss. 78 to 86.

Particulars of demand and notice how to be signed.

N.B. The particulars of demand and notice must be a copy of the particulars of demand and notice required to be annexed to the affidavit of debt.

69. Such particulars of demand and notice shall be directed to the party or parties intended to be summoned by the christian and surname of each of them (or where the christian name is not known, by the surname only, or, when the christian name is indicated only by any initial or contraction, then by such initial letter or letters or contraction of the supposed christian name and by the surname), and also by the place of residence or business, and shall also contain in the body thereof a statement of the name or names with such initial or initials, or contraction, as above mentioned, if the name is not known, of all the persons from whom the debt is claimed to be due, whether the whole of them shall be summoned or not, or (in case of partners) the style or firm of partnership and place of business, in the same form as above mentioned.

How such particulars of demand and notice should be directed.

70. The account in such particulars of demand shall be expressed with reasonable and convenient certainty as to dates and all other matters, and where credit is given in such account to the debtor, the notice shall require

The account to be expressed with reasonable certainty as to

dates, &c., and where credit is given in the account, payment

If affidavit for summoning debtor not filed within a certain time, fresh particulars of demand and notice required.

Affidavit of debt, what certainty required in.

The parties, how to be described in summons.

Notice to be indorsed on summons in the form given, to make known to the party summoned the provisions of the act relating thereto. See sects. 78 to 86.

payment of the difference or balance only which appears to be due in such account.

of the balance only to be required in the notice.

71. If the affidavit of debt under the said act shall not be filed within one calendar month after the service of the particulars of demand and notice, the plaintiff (or creditor) shall not afterwards be at liberty to proceed without serving new particulars of demand and notice.

72. Every affidavit for summoning a debt under the said act shall state the nature of the debt with the same degree of certainty and precision as is now or shall hereafter be required in an affidavit to hold to bail by order of a judge in the superior courts at Westminster.

73. Every summons of a debtor under the said act shall describe the parties in the same manner as they were described in the particulars of demand and notice.

74. Every such summons shall be indorsed with a notice as follows :—

“ Notice to the party summoned.

This summons is served upon you pursuant to the provisions of “The Bankrupt Law Consolidation Act, 1849,” and is founded on an affidavit of debt which was filed in the Court of Bankruptcy in London, or the Court of Bankruptcy for the — district, at —, on the — day of —, 18—.

If you shall fail to appear to this summons at the time and place within specified, having no lawful impediment made known to and proved to the satisfaction of the said court and allowed, and if you also fail within seven days after personal service of this summons, or within such enlarged time as the said court may grant, to pay, secure or compound for the demand within mentioned to the satisfaction of the summoning creditor, or enter into a bond in such sum, and with two sufficient sureties, as the court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought, or shall thereafter be brought, for recovery of the same, together with such costs as shall be given in such action, you will be deemed to have committed an act of bankruptcy on the eighth day after the service of this summons, provided a petition for adjudication of bankruptcy shall be filed against you within two calendar months from the filing of the above-mentioned affidavit.

If you shall appear, and, on appearance or at any enlargement or adjournment of the summons, shall refuse to sign an admission of the said demand in the form required by the said act, and shall not make a deposition on your oath in the form required by the said act, that you believe you have a good defence upon the merits to such demand or some part thereof, and shall not (if required by the court so to do) enter into a bond according to the form contained in schedule K. to the said act annexed, in such sum and with such two sufficient sureties as the court shall approve of, to pay such sum or sums as shall be recovered, together with such costs as shall be given in any action which shall have been or shall be brought for the recovery of such demand, or of any part thereof, in respect of which such deposition shall be made, and shall also fail within seven days after personal service of this summons, or within such enlarged time as aforesaid, to pay, secure or compound as above mentioned, or to enter into such bond as first above mentioned, the same consequence will follow as in the case first supposed, subject to the same proviso as regards the filing a petition for adjudication of bankruptcy.

If you shall appear, and on appearance shall sign and file an admission of the said demand, and shall not within seven days next after the filing of such admission pay or tender and offer to pay to the said creditor the amount of such demand, or secure or compound for the same to the satisfaction of such creditor, you will be deemed to have committed an act of bankruptcy on the eighth day after the filing of such admission, subject to the same proviso as before mentioned with regard to the filing a petition for adjudication of bankruptcy.

If you shall appear, and on appearance shall sign an admission for part of the said demand, and shall not make a deposition upon oath in the form required by the said act, that you believe you have a good defence upon the merits to the residue, and shall not (if required by the court so to do) enter into such bond as aforesaid, to pay such sum or sums as shall be recovered in any action which shall have been brought or shall thereafter be brought for the recovery of such residue, together with such costs as shall be given in such action, then if, as to the sum so admitted, you shall not within seven days next after the filing of such admission, pay or tender and offer to pay to the said creditor the sum so admitted, or secure or compound for the same to the

satisfaction of such creditor, and, as to the residue of such demand, shall not within seven days from the service of the summons, or such enlarged time as may be granted by the said court in that behalf, pay, secure or compound for the same to the satisfaction of such creditor, or enter into a bond in such sum, and with such two sufficient sureties as the court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought, or shall thereafter be brought for recovery of the same, together with such costs as shall be given in such action, you will be deemed to have committed an act of bankruptcy on the eighth day after the service of this summons, subject to the same proviso as before mentioned with regard to the filing a petition for adjudication of bankruptcy.

If you shall appear, and on appearance shall, as to the whole of the said demand or part of it, make a deposition on your oath (in the form required by the said act) that you believe you have a good defence upon the merits to the same, and (if required by the court so to do) enter into such bond according to the form contained in schedule K., in such sum and with such sureties as aforesaid, you will be entitled to a discharge from the summons.

You are moreover to observe, that an admission made by you after the service of this summons, though signed elsewhere than before the court, may afterwards be filed in court, and will be as effectual as if you had appeared and signed it in court, provided such admission be made in the form contained in schedule L. to the said act annexed, and there be present at the time of the signature an attorney of one of her majesty's superior courts of law on your behalf, expressly named by you and attending at your request, to inform you of the effect of such admission before it is signed by you: And provided also, that such attorney do subscribe his name to the admission as a witness to the due execution thereof, and in such attestation declare himself to be attorney for you, and state therein that he subscribes as such attorney."

75. Every summons of a debtor under the said act shall be indorsed with the name and place of business of the attorney actually suing out the same, but in case no attorney shall be employed for the purpose, then with a memorandum expressing that the same has been sued out by the summoning creditor "in person."

Summons to be indorsed with the name of the attorney suing out the same, or with a memorandum expressing that it was sued out by the creditor in person.

76. Every such summons shall be served four days at least before the time for appearance therein mentioned.

Summons to be served four days before time for appearance; between 9 a.m. and 9 p.m.

77. Every such summons shall be served between the hours of nine o'clock in the forenoon and nine o'clock in the afternoon.

78. If the plaintiff (or summoning creditor) shall make default in appearance by himself or his attorney at the time appointed in that behalf, the defendant (debtor) shall be entitled to his discharge from the summons, and a memorandum of such discharge shall be indorsed on the summons.

If plaintiff makes default in appearance, the defendant entitled to discharge from summons, &c.

79. If the defendant or party summoned shall appear at the time appointed in that behalf, or at any enlargement or adjournment thereof, and shall refuse to admit such demand, but shall, as to the whole of the said demand, or part of it, make a deposition as required by the said act, that he believes he has a good defence on the merits to the same or some part thereof, and if ordered by the court so to do, but not otherwise, enter into such bond according to the form contained in Schedule K. in such sum and with such two sufficient sureties, and within such time as the court shall approve of and direct, the defendant shall be entitled to his discharge from the summons, and a memorandum of such discharge shall be indorsed on the summons.

If defendant appear, when in such case entitled to discharge from summons.

80. Any want of compliance on the part of the plaintiff with these rules and orders in the particulars of demand and notice, and in the affidavit for summoning the defendant, and in the summons and service thereof, or in any or either of such matters, may be waived by the defendant, or allowed to be rectified by the court, when it shall not in the opinion of the court be matter of substance, or shall have arisen from a mere slip; but unless waived by the defendant, or rectified with the consent of the court, if the same shall be made known to and proved to the satisfaction of the court, at the time required by the summons for the appearance of the defendant, it shall be deemed and taken to be a good objection to requiring the defendant to state whether or not he admits the demand sworn to by the plaintiff or any part thereof; and in such case the defendant shall be entitled to his discharge from the sum-

Want of compliance with these rules, consequence of.

mons with costs, and a memorandum of such discharge shall be indorsed on the summons.

Application to
enlarge time.

81. Every application to enlarge the time for calling on the defendant to state whether or not he admits the demand or any part thereof, or for entering into a bond with sureties, shall be supported by affidavit.

Notice to be
given of de-
fendant's inten-
tion to enter into
bond.

82. Before any defendant shall be allowed to enter into a bond with sureties, according to the provisions of the said act, he shall give to the plaintiff or his attorney two clear days' notice in writing, signed by the defendant or his attorney, of the defendant's intention so to proceed.

Notice of sureties
to be accompanied
with copy of
affidavit of
sufficiency.

83. Such notice of sureties shall be accompanied with a true copy of their affidavit of sufficiency, which affidavit shall be in the following form, viz. :—

Form of affidavit
of sufficiency.

In the court of bankruptcy, London, or In the court of bankruptcy for the — district.

Between — and —.

A. B., of —, in the —, &c., and C. D., of —, &c., [*adding their place of residence and description respectively*], severally make oath and say: and first, the said A. B. for himself saith, that he is one of the proposed sureties for the above-named defendant, and that he the said A. B. resides at — aforesaid, and that he is worth property to the amount of £ — over and above what will pay and satisfy all his just debts and incumbrances, *that he is not surety in any manner for the above-named defendant or any other person except on the present occasion, [or if he is surety on any other occasion substitute for the words in italics the following], "and every other sum for which he is now surety;"* that his the said A. B.'s property to the amount aforesaid consists of [*here specify the nature and value of the property, according to the circumstances of the case, as follows*]: stock in trade in his business of a —, carried on by him at —, of the value of £ —, of good book debts owing to him to the amount of £ —, furniture in his house at —, of the value of £ —, of a freehold or leasehold farm of the value of £ —, situate at —, occupied by —, [*or of other property, particularizing each description of property with the value thereof*]. And the said A. B. further saith, that for the last six months he has resided at — aforesaid, [*or if he has resided at several places, then say, at the following places, particularizing them.*] And the above-named deponent C. D. for himself saith, that [*here pursue the same form as with respect to the former surety.*]

Sureties to justify
in what amount.

84. The amount of property so sworn to shall be at least equal to the sum demanded, or the portion thereof for which the bond is ordered to be given [*fractional parts of a pound excepted*], and one-fourth more.

Liberty to except
to sureties.

85. The plaintiff shall be at liberty, within four days after service of notice of sureties, to except to the proposed sureties, or either of them, by delivering a written notice to the defendant or his attorney, to the effect generally that he excepts to such surety or sureties [*as the case may be*], and a copy of such notice shall be served on the registrar of the court in which such exception is to be heard two days at least before the day of hearing.

Attendance in
court to justify
and opposition
thereto.

86. Two days after service of such notice of exception, the defendant or his attorney shall attend before the commissioner of the day in London, at three o'clock in the afternoon, or if in the country, at such time as the court shall appoint, with the bond duly stamped, and with an affidavit by the subscribing witness of the execution of such bond, and the plaintiff or his attorney shall be at liberty to oppose the sureties, or either of them, upon affidavit or on the ground of any defect appearing on the face of the proceedings.

Penalty of the
bond and form of.

87. The bond shall in all cases be taken in a penal sum to the amount of double the sum demanded, or the part thereof in respect of which the bond is to be given, up to the sum of 1,000*l.*; and beyond 1,000*l.* in the sum of 1,000*l.* beyond the sum demanded.

The condition of the bond is to be according to the form contained in Schedule K. to the said act.

Where no notice
of exception,
course of pro-
ceeding.

88. Where no notice of exception is served, the defendant or his attorney shall attend before the commissioner of the day on the sixth day after service of notice of sureties, at eleven o'clock in the forenoon in London, or if in the country, at the hour appointed by the court, with the bond and affidavit of execution aforesaid, and also with an affidavit of service of notice of sureties, and an office copy of the affidavit of sufficiency.

Arrangements between Debtors and their Creditors, under the Superintendence and Control of the Court.

89. [Presentation and allotments of petitions, 12 & 13 Vict. c. 106, ss. 211—223, obsolete.]
90. [Two copies to be delivered to registrar, obsolete.]
91. [Deposit with official assignee, obsolete.]
92. [Certificate of causes of detention to be annexed to petition, obsolete.]
93. [Sending and serving of notices, obsolete.]
94. [Petitioner's account to be attested and furnished to official assignee, obsolete.]
95. [Right to attend sittings and inspect proceedings, obsolete.]
96. Minutes of sittings, obsolete.]
97. [Title of affidavits, obsolete.]
98. [Forms, obsolete.]

SCHEDULE A.

- Form of Order for Protection to Petitioning Trader under Sect. 211.*
- Form of Renewal of Protection to be indorsed on the Original Order for Protection.*
- Order of Release of Petitioning Trader from Custody under Sect. 211.*
- Certificate of Approval of Resolution accepting Petitioning Trader's Proposal. Sect. 216.*
- Protection from Arrest to be indorsed on the foregoing Certificate.*
- Form of Account to be filed by Petitioning Trader under 12 & 13 Vict. c. 106, s. 214.]*

Arrangement by Deed. Sects. 224 to 229.

99. [Forms of certificates, account and affidavit, under 12 & 13 Vict. c. 106, ss. 225—227, obsolete.]

- Form of Certificate by Trustee or Inspector.*
- Form of Certificate by Two Creditors of the Trader.*
- Form of the Account to be appended to the Certificate of Trustee, or Inspector or Two Creditors.*
- Form of Affidavit of the Trader to accompany the Certificate.*
- Form of Certificate by the Court of Execution by requisite Proportion of Creditors.]*

Orders for Payment of Money and Costs and Execution thereon. Sects. 123, 132, 151 and 249.

100. That every order for payment of money and costs, or either of them, shall be signed by the commissioner making such order, and be sealed with the seal of the court, and be countersigned by the registrar, or one of the registrars, and shall be forthwith filed with the proceedings.

Order for payment of money for costs. 12 & 13 Vict. c. 106, ss. 123, 132, 151, 249.

101. That every order for payment of costs shall contain a direction that the party in whose favour the order is made may enforce the same by issuing execution.

Order for costs to contain leave to issue execution.

102. That the costs directed by any such order to be paid shall be taxed on production of an office copy of such order, and the allocatur being duly stamped shall be signed and dated by the master or registrar taxing the costs.

Taxation of costs.

103. That in all cases where writs of execution may be issued out of the court of bankruptcy to enforce an order for payment of money and costs, or either of them, the same shall be sealed with the seal of the court, and be issued by the chief registrar, on production of an office copy of the order for payment and (where the order comprises costs) on production of the allocatur.

Chief registrar to issue execution.

104. That at the time of issuing any writ of execution the solicitor causing the same to be issued shall file a præcipe thereof with the chief registrar in the form given in the schedule to these Orders.

Præcipes to be filed.

105. That the chief registrar shall file and keep every such præcipe, and shall keep a book in which he shall enter the same, with an index referring alphabetically to the names of the persons against whom writs are issued.

Præcipe book to be kept.

Forms of writs of execution and of the execution thereof.

106. That writs of execution shall be in the forms given in the following schedule, or as near thereto as the circumstances of the case may require, and such writs when sealed shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the superior courts of common law belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner in which he doth or ought to execute such like writs, and for the execution of such writs such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs issuing out of the superior courts of common law.

Teste and return.

107. That writs of execution shall be tested in the name of the senior commissioner and of the day when actually issued, and be made returnable immediately after the execution thereof, before the court of bankruptcy in London.

Indorsement of amount.

108. That the amount actually intended to be levied or extended, or for which the person is to be taken, and the name, occupation and address of the person against whom the writ is issued, and the name and residence, or place of business of the solicitor issuing the same, shall be indorsed on every writ of execution.

Venditioni exponas.

109. That on the filing of a return to a former writ that goods have been seized but not sold, a writ of venditioni exponas may be issued.

Returns to be filed with chief registrar and entered in præcipe book.

110. That on execution of the writ, or before execution, if so ordered by the court of bankruptcy in London, every writ shall be forthwith returned to the said court of bankruptcy, by filing the same (with the proper return indorsed) with the chief registrar, by whom such writ and return shall be filed of record, and the fact and date, and substance of the return, shall be forthwith entered in the præcipe book.

Entry of satisfaction.

111. That on satisfaction by levy or otherwise, in whole or in part, the party on whom the order is made may, on delivery of a search stamp, cause such satisfaction to be entered on the order for payment.

Order for entry of satisfaction.

112. That unless such satisfaction shall appear by the return of the writ, or shall be admitted by the party in whose favour the order shall be made, or his solicitor, application must be made to the court of bankruptcy wherein the proceedings and order shall be filed to order such entry of satisfaction.

Amendment of writs, &c.

113. That the court of bankruptcy shall, on proper application, exercise such and the same powers of amendment of writs of execution, and the indorsement thereon, and the præcipes thereof, in cases where such powers may be reasonably exercised, and on the same terms as to payment of costs or otherwise, as the superior courts of Westminster are in the habit of exercising.

SCHEDULE referred to rr. 104, 106.

Form of Præcipe on issuing Execution.

SURREY. Fi. fa., ca. sa., elegit, or venditioni exponas [as the case may be], against C. D. for payment of £— and £— costs [as the case may be] to A. B., official assignee of — [omit this if not applicable], on order of the court of bankruptcy in London [or for the — district]. Dated the — day of —, in the year of our Lord 18—.

E. F. [solicitor issuing the writ.]

Address —.

Date —.

Form of Writs (to be varied where necessary).

No. 1.

Writ of Fieri Facias on an Order for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, To the sheriff of —, greeting: Whereas by an order of the court of bankruptcy in London [or for the — district], dated the — day

of —, in the year our Lord 18—, and made in the matter of — [insert the title of the order], reciting that C. D., of —, in his examination taken the — day of —, and signed and subscribed by him, had admitted that he was indebted to the said bankrupt in the sum of £— upon the balance of accounts between the said C. D. and the said bankrupt, it was ordered that the said C. D. should pay to A. B., the official assignee of the estate and effects of the said bankrupt in full discharge of the sum so admitted, the sum of £— forthwith [make this conformable to the order]: And whereas we are given to understand that the said sum of £— [or that the sum of £—, part of the said sum of £—] is still unpaid: Now we command you that of the goods and chattels of the said C. D. in your bailiwick you cause to be made the said sum of £— [insert the sum to be levied], and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest upon the said sum of £—, at the rate of £4 per centum per annum from the said date of the said order. And that you have that money and interest before our court of bankruptcy at Basinghall Street, in the city of London, immediately after the execution hereof, to be paid to the said A. B., official assignee as aforesaid, in pursuance of the said order. And that you do all such things as by the statute passed in the year of our Lord 1838 you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to our said court of bankruptcy at Basinghall Street aforesaid immediately after the execution thereof, and have there then his writ. Witness [name of senior commissioner] at Basinghall Street, in the city of London, the — day of —, in the year of our Lord 18—.

No. 2.

Writ of Fieri Facias on an Order for Payment by Instalments of Debt admitted in Court to be due to the Estate of a Bankrupt.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, to the sheriff of —, greeting: Whereas by an order made in the court of bankruptcy in London [or for the — district], bearing date the — day of —, in the year of our Lord 18—, intituled "In the matter of —" [insert the title of the order], and reciting that C. D., of —, in his examination taken the — day of —, and signed and subscribed by the said C. D. (a), had admitted that he was indebted to the said bankrupt in the sum of £— upon the balance of accounts between the said C. D. and the said bankrupt, it was ordered that the said C. D. should pay to A. B., the official assignee of the estate and effects of the said bankrupt in full discharge of the said sum of £— the sum of £— in manner following, that is to say, by — instalments of £— each, the first whereof was to be made on the — day of —; and it was ordered that, in default of payment of any of the said instalments, the whole sum then remaining unpaid should immediately become payable and be paid: And whereas we are given to understand that default was made in payment of one of the said instalments, and thereupon the said sum of £— which then remained unpaid [or the sum of £—, being the portion of the sum so ordered to be paid which then remained unpaid, according to the facts] immediately became payable, but the same has not been paid: Therefore we command you that of the goods and chattels of the said C. D. in your bailiwick you cause to be made the said sum of £— [insert here the sum to be levied], and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest [proceeding as in the former form].

No. 3.

Writ of Fieri Facias on an Order for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt, and of Costs assessed by the Court.

Victoria, by the grace of God [as in the forms given above, reciting the order, including the portion of it relating to costs]. And whereas we are given to understand that the said sums of £— and of £— are still unpaid [make this agree with the facts]: Now we command you that of the goods and chattels of the said C. D. in your bailiwick you cause to be made the said sums of £— and £— [proceed as in the above forms, with the necessary variations].

(a) To be varied according to the facts of the case.

No. 4.

Writ of Fieri Facias on an Order for Payment of Costs to be taxed.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, To the sheriff of —, greeting: We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £— for certain costs which lately before our court of bankruptcy in London [or for the — district], by an order made in a certain matter there, intituled “In the matter of —” [insert the title of the order], bearing date the — day of —, were ordered to be paid by the said C. D. to A. B., official assignee of the estate and effects of — [omit this if not applicable, and alter the form to suit the facts of the case], which costs have been since taxed at the said sum of £—, as appears by an allocatur dated the — day of —, and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest at the rate of 4*l. per centum per annum* on the said sum from the said date of the said allocatur. And that you have that money and interest before our court of bankruptcy at Basinghall Street, in the city of London, immediately after the execution hereof to be paid to the said A. B. in pursuance of the said order. And that you do all such things as by the statute passed in the year of our Lord 1838 you are authorized and required to do in this behalf. And in what manner you shall have executed this our writ make appear to our said court in London immediately after the execution thereof. Witness — [name of the senior commissioner], at Basinghall Street, in the city of London, on the — day of —, in the year of our Lord 18—.

No. 5.

Writ of Capias ad Satisfaciendum on an Order for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, To the sheriff of —, greeting: [recite the order for payment, and that the money continues unpaid, as in the form of fieri facias before given and proceed]: Now we command you that you take the said C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body immediately after the execution hereof before our court of bankruptcy in London, to satisfy the said A. B., official assignee as aforesaid, the said sum of £—, and further to satisfy the said A. B., official assignee as aforesaid, interest upon the said sum of £—, at the rate of 4*l. per centum per annum* from the said date of the said order, and have there then this writ. Witness — [name of senior commissioner], at Basinghall Street, in the city of London, the — day of —, in the year of our Lord 18—.

No. 6.

Writ of Venditioni Exponas.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland queen, defender of the faith, To the sheriff of —, greeting: Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [here recite the mandatory part of the fieri facias to the end], and on the — day of — you returned to our said court of bankruptcy in London that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers [to be varied according to the actual return]: Therefore we, being desirous that the said A. B. should be satisfied the money and interest as aforesaid, command you that you expose to sale and sell or cause to be sold the goods and chattels of the said C. D. by you in form aforesaid taken and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before our said court of bankruptcy at Basinghall Street, in the city of London, immediately after the execution hereof, to be paid to the said A. B., and have there then this writ. Witness —, at Basinghall Street, in the city of London, the — day of —, in the year of our Lord 18—.

No. 7.

Writ of Elegit on an Order for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt.

Victoria, &c., to the sheriff of —, greeting: Whereas [*recite the order for payment, and that the money continues unpaid, as in the form of fieri facias above given, and proceed*]: And afterwards the said A. B. came into our said court of bankruptcy, and, according to the form of the statute in such case made and provided, chose to be delivered to him "her," or "them" [*as the case may be*], all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the — day of —, in the year of our Lord — (a), or at any time afterwards, or over which the said C. D. on the said — day of — (a), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said sum of £ — shall have been levied: Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold and customary tenure in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said — day of — (a), or at any time afterwards, or over which the said C. D. on the — day of — (a), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said sum of £ — shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court of bankruptcy aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have you there then this writ.

Witness —.

No. 8.

Writ of Elegit on an Order of the Court of Bankruptcy for Payment of Debt admitted in Court to be due to the Estate of a Bankrupt, and of Costs assessed by the Court.

Victoria, &c., to the sheriff of —, greeting: Whereas [*recite the order for payment, including the portion of it relating to costs, and that the monies are unpaid, as before, and proceed*]: And afterwards the said A. B. came into our said court of bankruptcy, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any one in trust for him, was seised or possessed of on the — day of —, in the year of our Lord — (a), or at any time afterwards, or over which the said C. D., on the said — day of — (a), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £ — and £ —, together with interest upon the said sum of £ —, at the rate of 4l. per centum per annum from the — day of — (a), and on the said sum of £ — at the rate aforesaid, from the — day of (b), shall have been levied: Therefore we command you that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your baili-

(a) The day on which the order was made.

(b) The date of the allocatur.

wick, except his oxen and beasts of the plough; and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him was or were seised or possessed of on the said — day of — (a), or at any time afterwards, or over which the said C. D., on the said — day of — (a), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ — and £ —, together with interest aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court of bankruptcy aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have you there then this writ.

Witness —.

No. 9.

Writ of Elegit on an Order for Payment of Costs to be taxed.

Victoria, &c., to the sheriff of —, greeting: Whereas lately in our court of bankruptcy in a certain matter there depending, intituled "In the matter of E. F.," by an order of our said court made in the said matter, and bearing date the — day of —, it was ordered that C. D. should pay unto A. B. certain costs as in the said order mentioned, and which costs have been taxed and allowed by G. H., Esq., the master of our said court, at the sum of £ —, as appears by the certificate of the said master, dated the — day of —: And afterwards the said A. B. came into our said court of bankruptcy, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of, on the — day of —, in the year of our Lord — (b), or at any time afterwards, or over which the said C. D., on the said — day of — (c), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ —, together with interest thereon at the rate [of] £4 per centum per annum, from the said — day of — (b) shall have been levied: Therefore we command you that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him was or were seised or possessed of on the said — day of — (b), or at any time afterwards, or over which the said C. D. on the said — day of — (b) or at any time afterwards, had any disposing power, which he might, without the assent of any other person or persons, exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ —, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our court of bankruptcy aforesaid, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness —.

-
- (a) The day on which the order was made.
 - (b) The date of the allocatur.
 - (c) The date of the master's certificate of taxation.

Course of Priority of Payment out of the Estate of the Bankrupt, of the Costs of the Petitioning Creditor, Sect. 114, and of Payment of Costs out of Joint or Separate Estates.

114. That after payment or retainer out of the estate of the bankrupt of all monies duly paid by the official assignee, the per centage on the gross produce of the estate, from time to time payable to the credit of "the chief registrar's account," and afterwards the per centage payable to the official assignee in respect of realizing the property, the costs of the petitioner of filing and prosecuting his petition, until the choice of assignees by the creditors, shall be paid as follows: first, the costs and charges of the messenger and broker acting under the petition to the time of the choice of assignees, and then the costs and charges of the solicitor acting in the matter of the petition until the said time.

Course of priority for payment of the costs of the petitioning creditor. 12 & 13 Vict. c. 106, s. 114.

115. That in case any joint estate of any bankrupts shall be insufficient to pay any costs or charges necessarily incurred in respect of the same, the court may order such costs to be paid out of the separate estates of such bankrupts, or one or any of them; and vice versâ may order costs necessarily incurred for any separate estate, if the same were incurred with reasonable probability of benefit to the joint estate, to be paid out of such joint estate.

In case joint estate insufficient, court may order costs to be paid out of separate estate, and vice versâ.

Composition after Adjudication of Bankruptcy, under Sections 230, 231.

116. [Minutes of first meeting. 12 & 13 Vict. c. 106, ss. 230, 231, obsolete.]
117. [Second meeting to be before commissioner.]
118. [Certificate of commissioner.]

With respect to Official Assignees and their Duties.

119. That each commissioner shall appoint his official assignees, where more than one is attached to his court, to act in rotation under the several bankruptcies prosecuted before him; unless in any case the commissioner shall see cause to the contrary.

Appointment by commissioners of official assignees to act.

120. That the same rule for the appointment of official assignees shall be followed as to existing commissions and fiats issued before the 11th October, 1849, under which no official assignee has been appointed.

Same as to existing commissions and fiats.

121. That the appointment of any official assignee to any bankrupt's estate shall be under the hand of the commissioner, and shall remain of record in the said court of bankruptcy; and certificates of such appointment, under the seal of the court, shall be delivered to such assignee by the registrar upon application for the same.

Appointment of assignees and the certificate thereof.

122. No official assignee shall either directly or indirectly carry on any trade or business, or hold or be engaged in any office or employment other than his office of official assignee.

Official assignee not to trade, &c.

123. Each official assignee shall find sureties to the extent of 6,000*l.*, and shall together with such sureties (except where otherwise especially directed by any three commissioners, of whom the senior commissioner shall be one) execute a joint and several bond to the chief registrar for the time being in the penal sum of 6,000*l.*

Official assignee to find sureties. [Sect. 38.]

124. Each official assignee to be made liable to the whole amount, and the sureties to be liable together to the like amount, in such proportions as shall be approved of by such three commissioners, provided that no one surety shall be liable for more than 3,000*l.*, nor less than 1,000*l.*

Liability of official assignee and sureties.

125. That each official assignee shall, on the 1st day of January in every year, or within one week then next following, make a declaration in writing, to be filed with the chief registrar, that to the best of his knowledge and belief his sureties are alive and solvent; and in such declaration state, to the best of his knowledge and belief, any change of residence of any or either of such sureties.

The official assignee annually to make declaration that his sureties to the best of his belief are alive and solvent, and also state any change of residence.

Official assignee to give notice of death, bankruptcy or insolvency of his sureties.

Official assignee to follow the instructions of the commissioner.

No official assignee to have under his control more than 100*l.* under any one estate, or in the aggregate more than 1,000*l.*

Form to be adopted on payment of money into the bank by an official assignee.

Allowance of official assignees. [*But now see Act 1861, s. 31.*]

[*See G. O., 3rd Feb 1855; G. O., 19th June, 1856; G. O., 12th Oct. 1861, r. 36.*]

Official assignee to keep a register of the bankruptcies to which he has been appointed.

Particular sets of books to be kept by the official assignee.

Official assignee to sort and number books, &c., of bankrupt.

126. Each official assignee shall, on pain of dismissal, give immediate notice in writing, to the chief registrar, of the death, bankruptcy or insolvency of any or either of his sureties; and shall, if required, cause a new bond to be executed to the like amount by another surety or sureties, to be approved of as above.

127. Each official assignee shall follow the instructions of the commissioner under whom he acts.

128. That no official assignee shall keep under his control upon any one estate more than 100*l.*; or, in the aggregate of monies of bankrupts' and petitioning debtors' estates, more than 1,000*l.*; and any excess beyond such sum shall be paid by him forthwith into the Bank of England.

129. That the official assignees, at the time of paying monies into the Bank of England, shall state in writing, delivered therewith to the cashier of the bank, in the form specified in the schedule hereunder annexed (No. 4), the date and amount of the payment, the name of the official assignee making it, the name and description of the bankrupt or bankrupts, to whose estate the money belongs, and it is to be placed to the credit of the accountant in bankruptcy; and the official assignee shall take a receipt for the same from the cashier of the bank, and on the same day carry or transmit it to the office of the accountant in bankruptcy, who will give a proper voucher for such receipt, and that the money is placed to the credit of the estate of the said bankrupt or bankrupts, in the books kept in the office of the accountant in bankruptcy, such voucher to be produced when called for by the court.

130. That the allowance to be made to the official assignee shall be upon the following scale; subject to variation in any particular case, and for special cause to be assigned by the commissioner in writing, and filed with the proceedings.

SCALE.

That there be paid to each official assignee for the examination of the bankrupt's accounts, such sum as the commissioners shall think fit, not exceeding 20*l.* for the accounts of one bankrupt, not exceeding 20*l.* for the joint estate of two or more bankrupts, and not exceeding 10*l.* for each separate estate, administered under the same adjudication.

For every debt collected, 5 per cent. on the first amount of 100*l.* or any less sum; 2½ per cent. on the next amount of 400*l.* or any less sum; 1 per cent. on the next amount of 500*l.* or any less sum; and ½ per cent. on all further sums (a).

For property realized, 2½ per cent. on the first amount of 500*l.* or any less sum; 1 per cent. on the next amount of 500*l.* or any less sum; and ½ per cent. on all further sums (a).

On dividend, 2 per cent. on the first amount of 1,000*l.* or any less sum, actually divided; and 1 per cent. on all further sums.

The per centage on mortgaged property to be calculated only on the residue payable to the bankrupt's estate.

For drawing every dividend warrant, or renewed dividend warrant, sixpence.

NOTE.—At the expiration of twelve months after these orders come into operation, this scale will be revised by the commissioners (subject to the approval of the lord chancellor), regard being had to the amount of remuneration received by the official assignees in the preceding twelve months.

131. That the official assignee shall enter in a book, to be called the register estate book, the names of the bankrupts in the commissions, fiats and petitions to which he shall have been or shall be appointed.

132. That the official assignee shall keep the following set of books, in size and form heretofore used; that is to say, register estate book (No. 1); register book of bankrupts' books delivered to official assignee under each estate (No. 2); debtor and property book; rough cash book; fair cash book; rough journal; fair journal (for bills of exchange, securities, &c.); ledger; letter book; petty cash and postage book; audit book.

133. That the official assignee, forthwith after his appointment under any bankrupt's estate, shall sort and number the books, papers and writings of the

(a) This ½ per cent. is reduced to ⅓ where the amount exceeds 5,000*l.*, by General Order, 19th June, 1856.

bankrupt, with the number of the estate, in the register estate book, and the number of each book, thus:—

[54. (The number of the estate in the register estate book).

75. (The number of the book, paper or writing received by the official assignee)],

and the official assignee shall file a list thereof with the proceedings, and shall also forthwith after his appointment deliver to the bankrupt a written notice or letter in the form specified in the schedule hereunto annexed (No. 1).

134. That the official assignee shall direct, in the form specified in the schedule hereunto annexed (No. 2), the payment of all monies due to any bankrupt's estate from any one person, or from two or more persons being partners, and carrying on business or residing in England, and exceeding in amount the sum of 500*l.* and of all monies being in the hands or under the control of any assignee or assignees chosen by the creditors of any bankrupt's estate to which such official assignee shall have been appointed, into the Bank of England, to the credit of the accountant in bankruptcy, and for the particular estate to which such money shall belong.

Official assignee to direct the payment of monies due to a bankrupt's estate from persons in England, and exceeding a certain sum in amount, to be made direct into the bank of England.

135. That when any money shall be paid into the Bank of England, pursuant to the directions aforesaid, the person so paying such money shall receive a certificate in the form specified in the schedule hereunto annexed (No. 3), from one of the cashiers of such bank, of his paying the same, and of its being placed to the account of the accountant in bankruptcy for the proper estate, and a voucher for such payment shall be sent by the bank on the same day to the said accountant.

Party making such payment to take a receipt for the same.

136. That as soon as conveniently may be after every such payment, the accountant in bankruptcy shall certify in writing to the proper official assignee that such payment has been made, and the name of the bankrupt or bankrupts, to the credit of whose estate the money has been placed in the books kept in the office of the accountant in bankruptcy.

Accountant in bankruptcy to notify such payment to the proper official assignee.

137. That all monies without exception received by the official assignee, and not paid by him forthwith into the Bank of England to the credit of the accountant of bankruptcy, shall be paid by the official assignee, as soon as they shall amount to 100*l.*, into the hands of a banker, with whom such official assignee shall keep an account as such official assignee, such account to be entitled as official assignee, and in which account no monies shall be entered, except such as are received by the official assignee in his official capacity.

All monies under the control of the official assignee to be kept at a banker's, to his account as official assignee, and not mixed with his own monies.

138. That all monies paid into the Bank of England to the credit of the accountant in bankruptcy, for the estate of any person adjudged bankrupt, or in matters of bankruptcy, shall be subject to the order of a commissioner of the court of bankruptcy, in writing under his hand, and testified by a registrar, as to the application thereof; provided that every such order shall specify the amount of any payment to be made by such order, the purpose to which it is to be applied, and the name of the official assignee or other person to whom the same is to be made for such purpose; and in cases where the sum to be paid exceeds 500*l.*, the name of the person beneficially entitled (to whom only in such case the payment shall be made), and the accountant in bankruptcy shall and may, pursuant to such order, pay the sum of money specified therein out of such bankrupt's estate, by a draught, subscribed to and on the same paper with the said order; such order and draught to be in the form specified in the schedule hereunto annexed (No. 5).

Order for payment of money out of the bank of England under any bankrupt's estate to be made by a commissioner in writing under his hand, and testified by a registrar; the application of the money to be specified in the order.

139. That all orders by the commissioner for payment of money, or for the transfer and sale (as hereinafter provided) of any stock or securities, being part of a bankrupt's estate, be signed in triplicate, and that one copy of any such order be filed with the proceedings in bankruptcy, and that one copy be left with the Bank of England, and that one copy be left with the accountant in bankruptcy.

Orders for payment of money, &c., to be signed in triplicate.

140. That the official assignee shall, before any audit, enter in a book the names of all the debtors to the bankrupt's estate, as returned in his balance sheet, and shall state the reasons why debts are not paid on the opposite page; such book shall be produced to the court at every audit.

Official assignee to enter in a book the names of all debtors to the bankrupt's estate, and state

therein the reasons why debts are not paid, and to produce the book at the audit.

Bills of exchange, notes, &c., to be deposited in the bank by official assignees, &c.

141. That each official assignee shall deposit in the Bank of England, to the credit of the accountant in bankruptcy, all bills, notes and other negotiable instruments, except unaccepted bills of exchange, as soon as he shall receive the same; and shall deposit in like manner all unaccepted bills of exchange as soon as the same shall have been accepted or refused acceptance; and shall at the time of such deposit leave a statement in writing with the cashier of the Bank of England specifying the date and contents of the instruments so deposited, the name of the official assignee making such deposit; the name and description of the bankrupt or bankrupts, and the particular estate to which the same respectively belong, and that such instruments respectively are to be deposited to the credit of the said accountant in bankruptcy; and shall also take a receipt for the same from the cashier of the bank, and carry or transmit it to the office of the said accountant in bankruptcy, who will give a proper voucher, to be produced when called for by the court.

Bill, &c., when due, how to be dealt with.

142. That when and as soon as any bill, note or other negotiable instrument, deposited as aforesaid in the Bank of England in the name of the said accountant, shall become due, the governor and company of the Bank of England shall, without any direction from the said accountant, deliver such bill, note or other negotiable instrument to one of the cashiers of the bank, who is to present the same for payment, and receive the sum of money due thereon, and forthwith to pay the sum so received, if any, into the Bank of England, to be there placed to the credit of the said accountant.

In case of non-payment, &c.

143. That in case any such bill, note or other negotiable instrument shall not be paid, the said governor and company of the Bank of England shall cause such bill, note or other negotiable instrument as is by law required to be noted and protested to be delivered to a notary for that purpose, and to be noted and protested accordingly, and shall, after the same shall have been so noted and protested, as the case may be, again deposit the same in the Bank of England, to the credit of the said accountant.

Bank of England to certify to accountant the receipt of money on bill, or dishonour, &c.

144. And that the said governor and company of the Bank of England forthwith, after every such receipt of money or deposit of any note, bill or other negotiable instrument, shall certify to the said accountant the sum of money received, if any, on each such bill, note or negotiable instrument and placed to the credit of the said accountant, or that such bill, note or negotiable instrument has been dishonoured; and such dishonoured bill, note or other negotiable instrument shall be forthwith delivered by the bank to the proper official assignee.

Official assignee to give notice of dishonour, &c.

145. And that as often as any bill, note or other negotiable instrument that shall have come to the hands of any official assignee shall have been or shall be dishonoured, such official assignee shall forthwith give such notice thereof as is by law required from the holder of such bill, note or other negotiable instrument respectively.

Commissioner to order delivery out of bills, notice, &c., to official assignee.

146. That any one of the commissioners of the court of bankruptcy acting in the prosecution of any bankruptcy may from time to time make order relative to the delivery out to an official assignee of any bill of exchange or promissory note which may stand in the Bank of England to the credit of the accountant in bankruptcy for the estate under such bankruptcy; provided that the purpose of such delivery be stated in the order, and such order be attested by a registrar.

Commissioner may order money to be invested in exchequer bills or sale of exchequer bills, &c.

147. That any one of the commissioners of the court of bankruptcy acting in the prosecution of any commission, fiat or petition for adjudication of bankruptcy may, as often as it shall appear to him expedient, by order under his hand in the forms specified in the schedule hereunto annexed (Nos. 6, 7 and 8), direct any money, which may have been paid into the Bank of England on account of the estate of the bankrupt named in such commission, fiat or petition, to be invested in the purchase of exchequer bills, to be lodged in the Bank of England, and may in like manner direct the sale or exchange of such exchequer bills, and also the exchange, sale or transfer of any stock in the public funds, or in any public company, or of any exchequer bills, India bonds or other public securities which shall have been transferred, delivered or paid into the Bank of England on account of such bankrupt's estate, and may

direct the proceeds thereof to be laid out in the purchase of exchequer bills, and that such exchequer bills, when so purchased, be deposited in the Bank of England, to the credit of the said accountant for such particular estate; and the said accountant shall and may, pursuant to such order, make such sale, purchase or transfer without any further order or direction; and the expenses thereof may be charged to the account of the estate for the benefit of which the same shall have been respectively made.

Provided always, that the signature of the commissioner be attested by a registrar, and that the order of the accountant in bankruptcy be subscribed to the order of the commissioner, and on the same paper with the said order.

Provided further, that no stock or public fund be transferred upon any sale, and that no exchequer bill, India bond or public security be delivered for the purpose of sale, except to a cashier of the Bank of England, until the price or value thereof be paid into the Bank of England to the credit of the accountant in bankruptcy for the particular estate to which it belongs, and that no sum be paid for the purchase of any exchequer bill, India bond or other public security until such exchequer bill, India bond or public security be deposited in the Bank of England to the credit of the said accountant in bankruptcy, and for such particular estate.

148. That the official assignee shall forthwith, after the declaration of a dividend, give notice by advertisement in the London Gazette, and to each creditor by a printed circular letter in the form specified in the schedule hereunto annexed (No. 9), to be sent through the post-office at the cost of the bankrupt's estate, to be settled by the commissioner, of the time and place of the delivery of the dividend warrants as hereinafter provided; and that at such time the official assignee will require the production of such securities, if any, as the creditor exhibited at the time of his proof; and that no dividend warrant will be delivered to the creditor holding any security for his debt until such security shall be produced without the special directions of a commissioner in that behalf.

The official assignee to give notice in Gazette, and to send through the post-office a printed circular letter to each creditor, giving him notice of the time and place of the delivery of the dividend warrant.
[See Act of 1861, s. 178.]

149. That when a dividend has been or may be declared, the solicitor to the estate shall forthwith make out three lists of the creditors in alphabetical order, and shall state in separate columns, after the name of each creditor, the amount of his debt and the dividend to which he is entitled, and in two of such lists the securities exhibited at the time of proof, and shall to each name prefix a number in regular series, together with the date of the order of dividend, according to the form in the schedule hereunto annexed (Nos. 10 and 11), and shall sign such several lists, and deliver the same within four days after the declaration of such dividend to the official assignee, who shall cause one of the lists which specifies such securities to be filed with the proceedings, and shall examine and sign the several lists, if correct, and shall prepare books at the expense of the estate, containing as many blank warrants as may be necessary, according to the form in the schedule hereunto annexed (No. 12) for London, and (No. 13) for the country, and shall number and fill up a warrant for each dividend, and insert in each warrant the name of the creditor to which the number of such warrant is prefixed in the list, and the dividend payable to him, and shall keep one of the lists specifying the securities in his custody, and shall take or send the books containing such warrants, together with the list not specifying the securities, to the accountant in bankruptcy, who shall ascertain that the amount of such warrants does not exceed the sum standing in his name to the credit of the bankrupt's estate, and shall compare the warrants with the lists, and if correct shall certify the same by affixing the seal of his office, to be provided for that purpose, in the margin of the warrants; and he shall keep in his custody the list of creditors, and return the warrants to the official assignee, for delivery to the creditors as hereinafter mentioned.

Payment of dividend.
The duty of solicitors.

Duty of official assignee.

Accountant's duty.

150. That when a creditor, or any person duly authorized under his hand to receive his dividend warrant, shall apply for the same, the official assignee shall require the production of such securities, if any, as the creditor exhibited at the time of his proof, and if satisfied that the amount of the said dividend

Official assignee's duty.

still remains due, shall fill up the date in the warrant and receipt, and upon the creditor or such other person authorized as aforesaid signing the receipt, the official assignee shall mark the securities (if any) with the amount of that dividend, and shall sign and deliver the warrant for the same; provided that no dividend warrant shall be delivered to any creditor holding any security for his debt until such security shall be produced; provided that upon the statement of a creditor that he is unable to produce his security, and that the same has not been parted with for any valuable consideration, nor assigned to any person, he shall be examined on oath before a commissioner as to the cause of such inability, and his examination shall be filed with the proceedings, and the commissioner shall adjudge whether in his opinion the creditor is or is not able to produce the security; and if the commissioner is of opinion that the security cannot for a sufficient cause be produced, the creditor shall give a sufficient indemnity to the official assignee to be approved by the commissioner, and upon such indemnity being given the official assignee shall deliver the dividend warrant to the creditor.

Commissioner to order payment of dividend in cases where securities cannot be produced.

Dividend warrant, how paid.

151. That the payment of the dividend warrant may be obtained by the creditor, or any person duly authorized by him under his hand to receive his dividend, or by the executor or administrator of any such creditor, upon production of the dividend warrant at the office of the accountant in bankruptcy, or in a country bankruptcy at any branch of the Bank of England, or such other bank as shall be named by the Bank of England in that behalf.

When order of commissioner for payment of dividend warrant.

152. That if any other person than the creditor or person duly authorized by him, or the executor or administrator of any such creditor, claim to receive the dividend, the person so claiming the same must obtain an order for payment thereof indorsed upon the warrant by a commissioner under his hand; and if any dividend warrant be above twelve months' date, a like order for payment thereof by a commissioner shall be required: provided always, that in no case shall any dividend warrant be paid to an official assignee unless such official assignee be the payee, or the executor or administrator of the payee, or the assignee of any bankrupt payee.

Transfer of money from general account to dividend account.

153. That when a dividend has been or may be declared under any commission, fiat or petition for adjudication, the commissioner acting in the prosecution of such bankruptcy may, by order under his hand, attested by a registrar, in the form specified in the schedule hereunto annexed (No. 14), direct the sum ordered to be divided, or such part thereof as may be required, to be carried from the general account of such estate to an account to be kept in the books of the accountant in bankruptcy, entitled "the dividend account," and to the particular estate; provided that when it shall appear that any part of the money directed to be applied in payment of any dividend is not called for to make such payment, the commissioner may, by order under his hand, testified as aforesaid, and in the forms specified in the schedule hereunto annexed (Nos. 15, 16, 17, 18 and 19, as the case may be), direct such sum to be carried back to the original account of the estate to which it belonged.

Commissioners authorized to carry back dividend not called for to the original account of estate.

Unpaid dividend warrants of above twelve months' date to be returned to the accountant in bankruptcy by the official assignee, and cancelled.

154. That all dividend warrants under any bankrupt's estate, which shall have been delivered to any official assignee by the accountant in bankruptcy for more than twelve calendar months, the same having been previously stamped by such accountant, but which shall not have been delivered to any creditor of such estate, shall forthwith, after the expiration of such twelve months, be brought or sent by such official assignee, together with two lists thereof, under each bankrupt's estate, to the said accountant, who shall thereupon compare the warrants with such lists, and cancel such warrants: and one of such lists shall be certified by the said accountant, and returned to the official assignee, who shall file such list with the proceedings of the respective bankruptcies; and the other of such lists to be retained by the said accountant.

Official assignee to deliver quarterly accounts of

155. That the official assignee shall once in every quarter of a year deliver to the court to which he shall be attached an account made up to the last day of the preceding month, together with his cash-book and banker's pass-book

duly balanced, and any other books that the commissioner may require; and such account shall show the balances placed to the credit of the accountant in bankruptcy, and of every estate under the charge of such official assignee in the books kept in the office of the accountant in bankruptcy, such balances to be certified by the said accountant; and such account shall also show the balances of every bankrupt's estate then in the hands or under the power or control of the official assignee.

balances, together with his cash book and pass book.
[See now, however. Act of 1861, s. 129.]

156. That such quarterly account shall be kept by the registrar of the court to which such official assignee shall be attached, and shall be open to the inspection of creditors; and that notice shall be given in each court of such account having been delivered, and that any creditor applying to the court may inspect the same without fee at such convenient time as may be appointed by the court.

The quarterly accounts to be kept by registrar of the court, and open to the inspection of creditors at convenient times.

157. That all monies, bills of exchange, notes and other negotiable instruments hereinbefore directed to be paid or delivered to or by the Bank of England, may be paid or delivered to or by the Bank of England by or through any of the branch banks thereof, or any other bank that may be named by the governor and company of the Bank of England for that purpose; and all business arising in the country with the Bank of England may, where necessary or convenient, be transacted with the Bank of England by or through any of such branch banks, or other bank so named.

Monies or bills, &c. may be paid or delivered to the bank of England through any of the branch banks thereof.

158. That the several forms specified in the schedule hereunto annexed for the several purposes therein stated, and not hereinbefore referred to, be followed in all cases where the same may be applicable.

Other forms in the schedule to be followed where applicable.

159. That if the official assignee shall without good and sufficient cause, to be allowed by the court, keep under his control more than 100*l.* of money belonging to any one estate or more than 1,000*l.* in the aggregate of monies belonging to bankrupts' estates, for more than one week, he shall be charged in his accounts by the commissioner with such sum as shall be equal to interest at the rate of 20*l.* per cent. per annum on the excess of the said sum of 100*l.* or 1,000*l.*, as the case may be, for such time as such money shall be under his control beyond the said week; and, unless the money has been kept for good and sufficient cause, allowed by the court, the official assignee shall be dismissed from his office, upon the report of the commissioner, or upon petition to the Lord Chancellor by the creditors' assignee or assignees, or by any creditor, and be liable to the costs and expenses, and have no claim to remuneration.

Official assignee keeping under his control more than 100*l.* under any one estate, or more than 1,000*l.* in the aggregate, to be charged with 20*l.* per cent. on the excess; and unless the money has been kept from proper causes, to be dismissed from his office, on the report of the commissioner, or upon petition to the lord chancellor by a creditor, and be liable to costs and expenses, and have no claim to remuneration.

missioner, or upon petition to the lord chancellor by a creditor, and be liable to costs and expenses, and have no claim to remuneration.

160. That all forms relating to the payment or delivery into or out of the Bank of England of any money, bills, notes or other securities under bankruptcies, prosecuted in the country, be printed in red ink.

Forms relating to payment, &c. of money under bankruptcies in the country to be printed in red ink.

161. That the orders hereby made as to official assignees of the estate of bankrupts, and their duties and conduct, shall, so far as the same are applicable, apply to and be observed by official assignees, appointed under petitions presented by debtors desirous of effecting arrangements with their creditors, under the superintendence and control of the court.

Orders as to official assignees under bankruptcies to be applicable to official assignees under petitions for arrangements, &c.

162. That printed copies of these rules and orders shall be supplied by the chief registrar to the several courts of bankruptcy in London, and in the country districts; and also to the accountant in bankruptcy, the governor and company of the Bank of England, the master in bankruptcy, and each official assignee; and that one such copy be posted up in some conspicuous place in every such court, and in the respective offices of the chief registrar, the accountant in bankruptcy, the master in bankruptcy and official assignees.

Printed copies of rules to be supplied by chief registrar, &c.

163. That these rules and orders shall take effect from and after the 11th day of January, 1853, from which time all rules and orders made previous to

Rules and orders, when to take effect.

the passing of the Bankrupt Law Consolidation Act, 1849, and the order made on the 12th of October, 1849, shall be and are hereby rescinded.

JOSHUA EVANS, Senior Commissioner.

JOHN S. M. FONBLANQUE,	} Commissioners.
EDWARD HOLROYD,	
EDWARD GOULBURN,	
WM. THOS. JEMMETT,	
M. B. BERE,	
RICHD. STEVENSON,	
WILLIAM SCROPE AYRTON,	
H. I. PERRY,	

Approved,
ST. LEONARDS, C.

19th October, 1852.

SCHEDULE OF FORMS.

No. 1.

Rule 133.

Form of Letter to Bankrupt forthwith after Appointment of Official Assignee.

Sir,

[Residence and date.]

Having been appointed official assignee to your estate, I have to inform you that the court requires you to make out and deliver to me immediately—

1st.—A list of all your creditors, alphabetically arranged, and of liabilities on bills of exchange, as acceptor, drawer or indorser, and any other engagement proveable under your estate. [If any creditor has received your acceptance, or note of hand, or any other bill, with your name as drawer or indorser, or any other security, goods or property, on account of his debt, state the particulars against his name.—This list is required within a week from this day.]

2ndly.—A list of all the debtors to your estate, distinguishing those under 10*l.* from those above 10*l.* [State the name and present residence of the debtor, and the sum due, distinguishing those you consider to be bad or doubtful, or that are disputed.—If the debtor has been bankrupt, state if the debt has been proved, and if any and what dividends have been received by you.—If you hold or have received any security from the debtor, state its nature.]

3rdly.—A statement of rent, taxes and rates due by you up to the quarter-day preceding your bankruptcy, with an account of all sums due for salaries and wages, and the rate per year, month or week.

4thly.—A statement of the probable value of your stock in trade, leasehold property in houses, lands or buildings, or any other property in your possession or control, or in the possession of others, on which you have received any advances or have an interest. [State if the stock and premises are insured from fire, in what office, and to what extent, and when the insurance expires, and who holds the policy.—If any goods have been pawned or deposited with pawnbrokers, or others, as security for advances or for any other purpose, state the particulars.]

5thly.—You will also inform me if there are in your custody, or in the custody of any other person, any books, papers or documents belonging to your estate, not already taken by the messenger or delivered to me.

And the court requires that you attend from day to day at my office, to make up and balance your books, and prepare a balance-sheet for the purpose of passing your last examination, and which must be filed at least ten days before the day appointed for the last examination, being the — day of —.

I remain, sir, your obedient servant,

—, Official Assignee.

No. 2.

Rule 134.

*Direction from Official Assignee for Payment of Sums exceeding 500*l.* in Amount due to a Bankrupt's Estate into the Bank.*

Bankrupt Law Consolidation Act, 1849.

By virtue of the general orders made under this act, and bearing date the — day

of —, I hereby direct you to pay the sum of £ —, due [or “by the books and statements of the bankrupt hereinafter named appearing to be due”] from you to the estate of C. D., of —, a bankrupt, into the Bank of England, to the credit of the accountant in bankruptcy, for the said estate.

At the time of payment you will have a receipt from the bank which will be a sufficient discharge to you for the same.

I am, &c.

—, Official Assignee.

To —.

N.B. *It is of great importance that you should produce this letter to the bank, or fill up the annexed form, when you make the payment.*

No. 2 a.

Bankrupt's Estates.

London, or —.

— day of —, 18—. Estate of —, of —.

—, Official Assignee.

A. B., —, of —, is desirous to pay into the Bank of England the sum of £ — to the credit of —, Esq., accountant in bankruptcy, for the above estate.

£ —. Entered —.

—, Bank Clerk.

To be sent or transmitted by the bank forthwith to the accountant in bankruptcy, upon payment being made into bank.

No. 3 and 3 a.

Certificate of Payment into Bank by other than Official Assignees.

Rule 135.

Bankrupt's Estates.

[— district.]

— day of —, 18—.

Estate of —.

I hereby certify, that A. B., —, of —, has this day paid into the Bank of England the sum of £ —, to be placed to the credit of —, Esq., as the accountant in bankruptcy for the above estate.

For the Governor and Company of the Bank of England,

£ —. Entered —.

—, Cashier.

N.B.—*This certificate to be retained by party making payment in.*

C

No. 4 and 4 a.

Certificate of Payment into Bank by Official Assignee.

Rule 135.

Bankrupt's Estates.

[— district.]

— day of —, 18—.

I hereby certify, that Mr. E. F., official assignee of the estate of —, bankrupt, —, has this day paid into the Bank of England the sum of £ —, to be placed to the credit of —, Esq., as the accountant in bankruptcy.

For the Governor and Company of the Bank of England.

£ —. Entered —.

—, Cashier.

N.B.—*This certificate to be sent forthwith to the accountant in bankruptcy by the official assignee, upon payment being made into bank.*

Rule 138.

No. 5.

Order for Payment of Money.

BANK.

In the Court of Bankruptcy.

Basinghall Street, London, —
day of —, 18—.

In the matter of A. B., of —, a bankrupt.

Before Mr. Commissioner —.

I certify that by my books the sum of £— stands to the credit of the above estate in the books of the accountant in bankruptcy.

Official assignee.

It appearing to me, by the annexed certificate, that the sum of £— stands to the credit of the above estate, and that the sum of £— is required for the —, I therefore order the said sum to be paid to —, out of the monies standing to the credit of the accountant in bankruptcy, in the books of the Bank of England.

—, Commissioner.

—, Registrar.

Estate of —.

Pursuant to the above order, pay to the said — the said sum of £—, to be charged to the debit of my account as accountant in bankruptcy.

£—.

—, Accountant.

To the Cashiers of the Bank of England.

No. 5 a.

Order for Payment of Money.

— District.

In the — District Court of Bankruptcy.

—, in the county of —,
day of —, 18—.

In the matter of —.

Before Mr. Commissioner —.

[The same as in the last form to the end.]

No. 6.

Rule 147.

Order for Purchase of Exchequer Bills.

In the Court of Bankruptcy.

Basinghall Street, London, —
day of —, 18—.

In the matter of A. B., of —, a bankrupt.

Before Mr. Commissioner —.

I certify that by my books the sum of £— stands to the credit of the estate in the books of the accountant in bankruptcy.

Official assignee.

It appearing to me, by the annexed certificate, that the sum of £— stands to the credit of the above estate, I order the sum of £— to be laid out in the purchase of exchequer bills, and that the exchequer bills, when purchased, be deposited in the Bank of England to the credit of the accountant in bankruptcy: Provided that no sum be paid for such purchase until the exchequer bills be deposited in the Bank of England.

—, Commissioner.

—, Registrar.

Estate of —.

Pursuant to the above order, pay to — the sum of £—, on his causing — exchequer bills so purchased to be deposited in the bank to the credit of my account as accountant in bankruptcy.

£—.

—, Accountant.

To the Cashiers of the Bank of England.

No. 6 a.

Order for Purchase of Exchequer Bills.

Rule 147.

In the — District Court of Bankruptcy.

—, in the county of —,
— day of —, 18—.

In the matter of —.

Before Mr. Commissioner —.

[The same as the last form to the end.]

No. 7.

Order for Sale of Exchequer Bills.

Rule 147.

In the Court of Bankruptcy.

Basinghall Street, London, —
day of —, 18—.

In the matter of —.

Before Mr. Commissioner —.

I certify that by my books the within mentioned exchequer bills stand to the credit of the above estate, in the books of the accountant in bankruptcy.

Official assignee.

It appearing to me, by the annexed certificate, that the following exchequer bills stand to the credit of the above estate, viz., —, I order that — of such exchequer bills be forthwith sold, and for that purpose that such exchequer bills be delivered out to one of the cashiers of the bank, who is to receive the money arising by such sale, and pay the same into the Bank of England to the credit of the accountant in bankruptcy; provided that such exchequer bills be not delivered by the cashier of the bank until the proceeds of the sale be paid into the bank as aforesaid.

—, Commissioner.

—, Registrar.

Estate of —.

Pursuant to the above order, deliver out of the Bank of England to one of the cashiers of the bank, the following exchequer bills, viz., —, for the purpose of being sold: Provided that such exchequer bills be not delivered by the cashier of the bank, until the proceeds of the sale be paid into the bank as aforesaid.

—, Accountant.

£—.

To the Cashiers of the Bank of England.

No. 7 a.

[Change form for District Court as in 6 a].

No. 8.

Order for Sale of Stock.

Rule 147.

In the Court of Bankruptcy.

Basinghall Street, London, —
day of —, 18—.

In the matter of —, a bankrupt.

Before Mr. Commissioner —.

I certify that by my books the sum of £— stock stands to the credit of the above estate in the books of the accountant in bankruptcy.

Official assignee.

It appearing to me, by the annexed certificate, that the sum of £— stands to the credit of the above estate, I therefore order the said sum of £— to be forthwith sold: Provided that such stock be not transferred by the accountant in bankruptcy until the proceeds of the sale be paid into the Bank of England to the credit of the said accountant.

—, Commissioner.

—, Registrar.

To the Cashiers of the Bank of England.

No. 8 a.

[Change form for District Court as in 6 a.]

No. 9.

Rule 148.

Notice by Official Assignee to Creditor when Dividend is payable.

Estate of —.

— District, — day of —.

Sir,

I have to inform you that you may, upon application at my office on any — or — after the — day of —, between the hours of —, receive a warrant for the dividend due to you in the above estate.

If you cannot personally attend, the warrant will be delivered to your order upon your filling up and signing the subjoined letter.

The bills and securities (if any) exhibited at the time of the proof of your debt must be produced to me before the warrant for the dividend can be received.

I am, sir,

Your obedient servant,

—, Official Assignee,

— Residence.

— day of—.

To —.

Estate of —.

Sir,

Please deliver to — the dividend warrant payable to me under the above estate.

To —, Official Assignee.

— Creditor.

Rule 149.

No. 10.

[This form seems not now in use. See No. 11.]

No. 11.

[See Act of 1861,
s. 178.]

List of Proof of Debt and Claims for Dividend.—No. 1.

In the Court of Bankruptcy, at Basinghall Street [or In the — District Court of Bankruptcy at — in —.]

In the matter of —, bankrupt.

18-.

A list of debts proved and claimed under this bankruptcy, with the — dividend at the rate of — in the pound, this day declared thereon by Mr. Commissioner —.

Note.—The dividends will be paid from this list; it is therefore required to be carefully extracted from the proceedings; signed by the solicitor to the fiat, and delivered to the official assignee the same day, or, at the furthest, the following day.

[illegible]

F. G., Creditor's Assignee.

T. E. W., Registrar.

No. 12.

London Dividend Warrant.

No. —. Rule 149.

Margin of Book.

—
Number of
warrant.
Estate —.
— dividend
of — in the
pound.
Creditor A. B.
Reed. warrant
— day of —
— Creditor.

Accountant's Stamp.

£ —. London, — day of —, 18—. Estate of —, bankrupt.
(Under fiat or commission, or petition for adjudication of bankruptcy, dated —.)
Dividend of — in the pound, declared — day of —, 18—. A. B., —, is entitled to be paid the sum of —.
—, Official Assignee.
To the accountant in bankruptcy.

Order for } Let this be paid to A. B. or bearer from my account
Payment. } as accountant in bankruptcy.
£ —. —, Accountant.
To the Cashiers of the Bank of England.

N.B.—This, upon being endorsed by the payee, will be paid any day between the hours of eleven and three, at the office of the accountant in bankruptcy, at the court of bankruptcy, Basinghall Street.

Observe the following rules as to endorsement.

Rules as to Endorsement of Warrant.

That the endorsement by an executor or administrator of any creditor be sufficient.
That if any other person than the creditor, or person duly authorized by the creditor, claim to receive the dividend, the person so claiming the same must obtain an order for payment thereof upon the warrant by a commissioner under his hand; and if any dividend warrant be above twelve months' date, a like order for payment thereof by a commissioner shall be required: Provided always, that in no case shall any such dividend be paid to an official assignee, unless such official assignee be the payee, or the executor or administrator of the payee, or the assignee of any bankrupt payee.

No. 13.

Country Dividend Warrant.

No. —. Rule 149.

Margin of Book.

—
Number of
warrant.
Estate of —.
— dividend
of — in the
pound.
Creditor —.
Reed. warrant
— day of —
— Creditor.
— day of —.

Accountant's Stamp.

£ —. — district, — day of —, 18—. Estate of —, bankrupt.
(Under fiat or commission, or petition for adjudication of bankruptcy, dated —.)
Dividend of — in the pound, declared — day of —, 18—. A. B., —, is entitled to be paid the sum of —.
—, Official Assignee.
To the accountant in bankruptcy.

Order for } Let this be paid to A. B. or bearer from my account
Payment. } as accountant in bankruptcy.
£ —. —, Accountant.
To the Cashiers of the Bank of England.

N.B.—If the sum to be paid on the above warrant be under the sum of ten pounds, the same may be received at any branch of the Bank of England without the signature of the accountant if presented within one calendar month of the date of the warrant.

This, upon being endorsed by the payee, will be paid any day between the hours of eleven and three, at the office of the accountant in bankruptcy, at the court of bankruptcy, Basinghall Street, London, or at any branch of the Bank of England.

Observe the following rules as to endorsement.

Rules as to Endorsement of Warrant.

That the endorsement by an executor or administrator of any creditor be sufficient.

That if any other person than the creditor, or person duly authorized by the creditor, claim to receive the dividend, the person so claiming the same must obtain an order for payment thereof upon the warrant by a commissioner under his hand; and if any dividend warrant be above twelve months' date, a like order for payment thereof by a commissioner shall be required; provided always, that in no case shall any such dividend be paid to an official assignee, unless such official assignee be the payee, or the executor or administrator of the payee, or the assignee of any bankrupt payee.

No. 14.

Order of Transfer to Dividend (a).

Rule 153.

In the Court of Bankruptcy.

Basinghall Street, London, —
day of —, 18—.

Before Mr. Commissioner —.

In the matter of —.

I certify that by my books the sum of £— stands to the credit of the above estate in the books of the accountant in bankruptcy.

Official assignee.

£— carried back, — day of —.
Entered —.

By the annexed certificate, it appears that the sum of £— stands to the credit of the above estate; and by an order made in this bankruptcy on the — day of — a dividend amounting to £— was ordered to be paid to the creditors: I therefore order the sum of £— to be carried to the "dividend account" of the above estate.

—, Registrar.

—, Commissioner.

No. 15.

Proof reduced (a).

Rule 153.

In the Court of Bankruptcy.

— day of —, 18—.

In the matter of —.

Before Mr. Commissioner —.

I have altered the proof of — from £— to £—, and hereby direct a warrant to be drawn for the dividend of — in the pound, corresponding with such alteration, and amounting to the sum of £—; and I further direct a new warrant to be made out for the balance £— to be carried back to the original account of the above estate in the books of the accountant in bankruptcy.

£— To be signed.

£— To be carried to the "original account."

£— Dividend on original proof.

—, Commissioner.

£— carried back, — day of —.

Entered —.

N.B.—Old warrant to be produced to accountant in bankruptcy, and cancelled by him, before new warrant be stamped and signed by him.

No. 16.

Proof expunged (a).

Rule 153.

In the Court of Bankruptcy.

— day of —, 18—.

In the matter of —.

Before Mr. Commissioner —.

I have expunged the proof of —, and I order that a new warrant be made out for the dividend thereon, amounting to —, to be carried back to the original account of the above estate, in the books of the accountant in bankruptcy.

—, Commissioner.

£— carried back, — day of —.

Entered —.

N.B.—Old warrant to be produced to accountant in bankruptcy to be cancelled by him.

(a) This form is the same for country bankruptcies, except in the heading, for which see p. 1261.

No. 17.

Claim established (a).

Rule 153.

In the Court of Bankruptcy. — day of —, 18—.
 In the matter of —. Before Mr. Commissioner —.
 — having established his claim of — I hereby direct a warrant to be drawn for
 the dividend of — in the pound thereon, amounting to the sum of £—.
 (Signed) —, Commissioner.
 — day of —.
 Entered —.

No. 18.

Claim in part established (a).

Rule 153.

In the Court of Bankruptcy. — day of —, 18—.
 Before Mr. Commissioner —.
 — having in part established his claim of £— to the extent of £—, I
 hereby direct a warrant to be drawn for —, being the dividend on the sum of £—.
 And I further direct a warrant for the residue of the dividend reserved on the said
 claim of £—, amounting to £—, to be drawn, and the sum carried to the original
 account of the above estate in the books of the accountant in bankruptcy.
 £— To be signed.
 £— To be carried to "original account."
 £— Originally reserved, being the dividend at the rate of — in the pound
 on £—.
 —, Commissioner.
 £— carried back, — day of —.
 Entered —.

No. 19.

Claim expunged (a).

Rule 153.

In the Court of Bankruptcy. — day of —, 18—.
 In the matter of —. Before Mr. Commissioner —.
 I have expunged the claim of — for £—, and hereby direct a warrant to be
 drawn for the dividend of — in the pound thereon, amounting to the sum of £—,
 to be carried back to the original account of the above estate in the books of the ac-
 countant in bankruptcy. —, Commissioner.
 £— carried back, — day of —.
 Entered —.

No. 20.

Form of Payment into Bank by Official Assignee to the Chief Registrar's Account.
Per-centage Fee under Bankrupt's Estates, 12 & 13 Vict. c. 106.

[Sect. 54, obsolete,
 as per-centage fee
 is abolished. Act
 of 1861, s. 38.]

No. 21.

First Letter to Debtors for Sums under 500l.

Rule 134.

Estate of —. No. [Residence and date.]
 Sir,
 By the books and statements of the above bankrupt, you appear to be indebted to
 this estate in the sum of £—, which, if admitted, I request may be paid at my
 office, on or before the —.
 If you dispute this demand, or any part of it, an early answer stating the fact, and
 the grounds of your objection, may save further trouble.
 I remain, sir,
 Your obedient servant,
 —, Official Assignee.
 Office hours—nine till four.
 Bring or send this letter on calling, and in any written communications please name
 the estate and the number.

(a) See note, ante, p. 1264.

No. 22.

Rule 134.

Another Form for Debtors for Sums under 500l. intended for those residing out of London.
No.

Estate of —.

Sir,

[Residence and date.]

By the books and statements of the above bankrupt, you appear to be indebted to this estate in the sum of £ —, which I request may be paid to me at my office, on or before the —.

If the claim is incorrect, or any objection intended to the payment, I request the favour of being immediately informed of the grounds thereof.

I remain, sir,

Your obedient servant,

—, Official Assignee.

NOTE.—If this debt be not paid by the above day, interest thereon at the rate of five per cent. per annum will be demanded, pursuant to the 3 & 4 Will. 4, c. 42.

It may be desirable for parties in the country to be informed, that the postmaster in post towns will receive sums not exceeding 5l., and give orders for them on the post-office in London, which orders can be remitted to me in payment of debts.

Office hours — nine till four.

Bring or send this letter if you call or send.

No. 23.

Rule 134.

Second Form of Letter to Debtors, where first Application has not been effectual.

The Bankrupt Law Consolidation Act, 1849.

Estate of —.

Sir,

[Residence and date.]

The applications I have made for payment of £ —, appearing by the bankrupt's books and statements to be due by you to this estate, having failed to produce a settlement, I have now to inform you, that if this sum be not paid on or before the —, it will be my duty to apply for a summons to bring you before the court to be examined on oath, and that you will be liable to the costs of this proceeding.

I am, sir,

Your obedient servant,

—, Official Assignee.

No. 24.

Rule 135.

Letter to Creditors for Particulars of Demand, &c.

Estate of —, bankrupt.

Sir,

[Residence and date.]

I request you will immediately favour me with a statement of your account with the above bankrupt, and the particulars of any bills, notes, deeds, goods, or other securities in your possession.

I remain, sir,

Your obedient servant,

—, Official Assignee.

No. 25 (a).

Form of Affidavit by Creditor of Loss of Bill of Exchange.

Rule 158.

In the matter of —.

I, C. D., make oath and say, that I have made a careful search for the bill of exchange, the particulars whereof are underwritten, and which has been proved under this estate by —, but that I the deponent have not been able to find the same, and I verily believe that the same has been lost or mislaid; and I further say that I have not nor has the said — or any person or persons to his use, to this deponent's knowledge or belief, negotiated the said bill, nor in any manner parted with or assigned his legal or beneficial interest in the said bill of exchange, or any part thereof; and that I am the person now legally and beneficially interested in the same, and entitled

(a) These numbers are the same as are affixed to the forms in the schedule to the General Order.

to receive for my own use all dividends in respect thereof, and that all dividends which have been paid or declared or monies received on account of or in respect of said bill, or from any other security, do not amount to twenty shillings in the pound, and that the dividend now payable under the above estate and not yet received will not make up twenty shillings in the pound.

Bill above referred to.

Date.	Drawer.	Acceptor.	Sum.		

Sworn before me at —, this — day of —, 18—. Upon the above-named — signing the annexed letter of indemnity, and giving security to the satisfaction of the official assignee, I direct the dividend to be paid to —.

—, Commissioner.

Estate of —, bankrupt.

Sir,
The under-mentioned bill proved by — under this estate having been lost or mislaid, and the following dividend having been declared thereon, but not yet paid, viz. —, and which dividend, with all others already received, or which have been declared or become payable on or in respect of the said bill, do not amount to twenty shillings in the pound thereon; in consideration therefore of your paying to — or to my order the dividend above mentioned I hereby undertake to indemnify you against all claims of any other person to the said dividend, or any part thereof, and from all loss, damage and expense, which you, or your executors or administrators, may sustain by reason of your making such payment to me; and if it should hereafter appear that the said sum of £ — or any part thereof, with the dividends already received or declared up to this day, exceed the amount of the bill, I hereby engage to repay the same to you, or to the assignee or assignees of the above estate, with interest at the rate of five per cent. per annum from this day. Dated at —, this —.

Bill above referred to.
To Mr. —, Assignee to the above estate.

No. 26.

Monthly Return of Proceedings from the — District Court of Bankruptcy from the — Rule 40. to the — day of —, 18—, both days inclusive.

BANKRUPT.

Name
Address
Trade
Date of commission
Fiat or
Filing petition

ADJUDICATION.

Date of
If adjourned or annulled insert accordingly

PETITIONING CREDITOR.

Name
Residence
Trade

OFFICIAL ASSIGNEE.

Date of appointment
If changed insert accordingly

Monthly Return of Proceedings, &c.—continued.

SOLICITOR.

Name ..	..	..	..	..	..
Residence ..	..	..	..	..	..
If changed insert accordingly	..	..	..	..	..

CREDITORS' ASSIGNEE.

Date of appointment	..	..	..	..	..
If changed insert accordingly	..	..	..	..	..

LAST EXAMINATION.

Day appointed for	..	..	..	..	..
Adjourned to ..	..	..	..	..	..
Passed or otherwise	..	..	..	..	..

CERTIFICATE.

Date of	..	..	..	..	..
Class ..	..	..	..	..	..
Refused or suspended	..	..	..	..	..

[For Special Conditions, Appeal, &c., see Remarks.]

AUDIT.

Date of	..	..	..	..	..
Amount in hand applicable to dividend	..	..	..	..	..

DIVIDEND.

No. of, or final	..	..	..	..	..
Date ..	..	..	..	..	..
Rate ..	..	..	..	..	..
Sum divided	..	..	..	..	..
Surplus undivided	..	..	..	..	..

REMARKS AND SPECIAL CIRCUMSTANCES.

GENERAL ORDER

MADE IN PURSUANCE OF "THE BANKRUPTCY ACT, 1854."

Saturday, the 3rd day of February, 1855, in the 18th year of the reign of Her Majesty Queen Victoria.

The right honourable Robert Monsey, lord Cranworth, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable the lord justice sir James Lewis Knight Bruce, the right honourable the lord justice sir George James Turner, Edward Holroyd, esquire, and Edward Goulburn, serjeant-at-law, two of the commissioners of her majesty's court of bankruptcy, doth hereby, in pursuance and execution of the powers of an act of parliament, passed in the session of parliament holden in the seventeenth and eighteenth years of the reign of her present majesty, intituled "An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts," and of all other powers enabling him in that behalf, order and direct that from and after the tenth day of February instant, the remuneration of an official assignee for his services in respect of a bankrupt's estate, shall, until further order, be calculated and allowed according to the scale prescribed by the rule numbered 130, comprised in the rules and orders made on the nineteenth day of October, one thousand eight hundred and fifty-two, in pursuance of "The Bankrupt Law Consolidation Act, 1849," subject to variation in any particular case, and for special cause to be assigned by the commissioner in writing, and filed with the proceedings.

CRANWORTH, C.

J. L. KNIGHT BRUCE, L. J.

G. J. TURNER, L. J.

EDWARD HOLROYD, Commissioner.

EDWARD GOULBURN, Commissioner.

See section 31, 24 & 25 Vict. c. 134, p. 1194, also General Order, 19th June, 1856, post, p. 1289.

REGULA GENERALIS.

GENERAL ORDER

MADE IN PURSUANCE OF "THE BANKRUPTCY ACT, 1854," MAY 19TH, 1855.

The right honourable Robert Monsey, lord Cranworth, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable the lord justice sir James Lewis Knight Bruce, the right honourable the lord justice sir George James Turner, Edward Holroyd, esquire, and Edward Goulburn, serjeant-at-law, two of her majesty's commissioners of the court of bankruptcy, doth hereby, in pursuance and execution of the powers of an act of parliament passed in the session of parliament holden in the seventeenth and eighteenth years of the reign of her present majesty, intituled "An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts," and of all other powers enabling him in that behalf, order and direct that, from and after the date hereof, the bills of costs of solicitors, and the charges and fees of messengers, brokers, auctioneers and accountants, with respect to any proceedings or employment in matters of bankruptcy, shall, in the court of bankruptcy in London, and in the several district courts of bankruptcy, be taxed, settled and allowed, according to the schedule hereunto annexed: provided always, that so far as relates to the country districts, this scale, with respect to the messengers' fees, shall not, where there are now two messengers, come into operation until the number is reduced to one, and where there is only one messenger until the appointment of a new messenger in the place of such one messenger; and until such new scale shall come into operation the fees shall, subject to any further order, be taken according to the scale dated the 26th October, 1843.

(Signed) CRANWORTH, C.
J. L. KNIGHT BRUCE, L. J.
G. J. TURNER, L. J.
EDWARD HOLROYD.
EDWARD GOULBURN.

SCHEDULE (a).

Petitioning Creditor's Bill of Costs to the Choice of Assignees.

	£	s.	d.
Instructions for petition.. .. .	1	0	0
Examining witnesses as to trading	0	10	0
Ditto as to act of bankruptcy	0	10	0
The bankrupt being the petitioner, or the act of bankruptcy being a declaration of insolvency filed by the solicitor to the petitioner, or an assignment prepared by the solicitor to the petitioner, or default made upon a trader debtor's summons issued by the solicitor to the petitioner, this charge will not be allowed. The expense of an assignment will not be allowed where a declaration of insolvency would answer the purpose.			
If solicitor reside at a distance			
Writing agent to search for prior petition		3s.	6d.
Agent's writing result of search		3s.	6d.
Searching, if prior petition filed, and paid stamp	0	7	8
Drawing and engrossing petition for adjudication	0	10	0
Paid for stamp and parchment	10	1	0
Attesting signature of each petitioner, except in case of partnership	0	6	8

(a) For costs in cases where the debts are under 300*l.*, or where the debtor petitions *in formá pauperis*, see General Order, 6th November, 1861; General Order, 22nd May, 1862.

	£	s.	d.
Drawing and fair copy affidavit verifying petition	0	6	8
Attending petitioner to be sworn	0	6	8
Paid oath (if paid)	1s.	6d.	
(N.B.—This may be sworn in court.)			
Affidavits are not unnecessarily to be sworn out of court, no fee being payable when sworn in court.			
Fee on petition	1	0	0
Attending to file petition and ballot for commissioner	0	6	8
Preparing summonses and summoning witnesses, or arranging with witnesses, for their attendance at opening	0	13	4
Paid them			
See Witnesses' Scale. Petitioning creditor is not to be regarded as a witness, and is not to be paid for loss of time; he may claim his expenses of travelling and subsistence.			
Attending petitioning creditor, examining particulars of his account against the bankrupt to annex to his deposition	0	6	8
Attending to open petition when court adjudicated, and clerk	1	5	0
If by agent	2l.	5s.	
One fee only for attending on adjudication will be allowed, unless by direction of the court at the time, and a memorandum of its allowance produced to the taxing officer.			
Court fee and memorandum for house registrar (in London)	0	13	10
The sheriff being in possession under an execution (or parties being in possession under a bill of sale), drawing and fair copy notice of adjudication	0	5	0
Copy and service at sheriff's office, or on bailiff	0	5	0
Ditto on execution creditor or creditors	0	5	0
Ditto on plaintiff's attorney or attorneys	0	5	0
Attending to bespeak copy proceedings, and afterwards for same	0	3	4
Paid for same, at 1½d. per folio of 90 words			
Attending messenger, instructing him as to residence of bankrupt or bankrupts, and places of business	0	6	8
Attending the official assignee, conferring with him on the dealings and the particulars of estate and effects of the bankrupt or bankrupts	0	13	4
In country bankruptcies (drawing advertisement for provincial paper, and fair copy) 6s. 8d.			
Attending to order and pay for insertion or insertions	6s.	8d.	
Paid for same			
N.B.—One advertisement, or when the creditors are numerous, two—one preceding the choice of assignees, and one preceding the last examination; but where several consecutive advertisements are necessary in the same paper, only one attendance to order such advertisement allowed, and where in several papers only one 6s. 8d. for one or two papers, and another 6s. 8d. for a third and fourth.			
Attending court at the suggestion of the official assignee, and procuring its sanction for carrying on business, or for sale of such estate as may be ordered by the court	0	13	4
Bankrupt being in custody, attending court to obtain warrant to bring bankrupt up to surrender, and instructing messenger	0	13	4
Such warrant to be transmitted by the messenger through the post if at a distance.			
Paid gaoler's fee	1	1	0
Or if brought up by gaoler's assistant (if from a distance, to be allowed as in case of witnesses)			
Attending on bankrupt or bankrupts surrendering and consenting to advertisement of adjudication, and (where necessary) attending at the expiration of the time allowed to the bankrupt or bankrupts for disputing the adjudication, such bankrupt or bankrupts not having surrendered, to appoint the sittings	0	13	4
Perusing and examining affidavits of debt, with accounts and securities transmitted by creditors residing at a distance of ten miles or upwards from the court, preparing affidavits from such accounts and securities, sending them to the creditor to be sworn, exhibiting same to the court, and returning securities (if any), for each affidavit	0	2	6
The gross amount of such allowance to be in the discretion of the taxing officer. No charge to be allowed for preparing, perusing or examining powers of attorney to vote in the choice of assignees.			

	£	s.	d.
Attending court on choice of assignees and clerk	1	5	0
Court fee and attending to pay same (in London)	0	13	10
Paid for copy proceedings, as before			
Attending to bespeak, and afterwards for same	0	3	4
Copy and service of appointment to tax (when the assignees appoint a different solicitor)	0	5	0
Attending taxing.. .. .	0	6	8
Court fee and attending to pay (in London)	0	13	10
Attending taxation of messenger's costs, when thought necessary by the taxing officer	0	3	4
Letters, messengers and printed forms for proceedings	0	10	0
Paid for allocatur stamp.. .. .			

Where Act of Bankruptcy is an Assignment for Benefit of Creditors (only allowed by Special Order of the Court).

Instructions for assignment	0	6	8
Drawing same, per folio 1s. To the extent of 25 folios; if longer, at the discretion of the taxing officer.			
Fair copy, per folio 4d.			
Ingrossing same, per folio 8d.			
Paid stamp and paper	1	15	6
Attesting execution 6s. 8d. each assigning party			

Where the Creditor proceeds under the Bankrupt Law Consolidation Act, 1849, Sect. 72, Act of Bankruptcy being the not paying, securing or compounding a Judgment Debt.

Drawing notice of demand of judgment debt and fair copy	0	5	0
Attending creditor for his signature thereto	0	6	8
Personal service thereof	0	5	0

As the 72nd section is repealed, these items are rendered for the future unnecessary. See p. 1231, ante.

Where the Creditor proceeds under the Bankrupt Law Consolidation Act, 1849, Sect. 73, Act of Bankruptcy being Disobedience of Order of a Court of Equity for Payment of Money.

Making copy of decree or order for service, per folio 4d.			
Service thereof	0	5	0
Instructions for affidavit to ground motion to court to fix a peremptory day for payment	0	6	8
* If made by the solicitor or his clerk, no charge for instructions.			
Drawing same, per folio 1s.			
Fair copy same, per folio 4d.			
Attending to be sworn	0	6	8
Paid oath			
Attending to file affidavit and bespeak office copy	0	6	8
Paid for office copy			
Brief copy decree, and affidavits for counsel, per folio 4d.			
Fee to him			
Attending him	0	6	8
Attending court, order made	0	13	4
Attending to draw up and pass order	0	6	8
Paid for same			
Copy order for service, per folio 4d.			
Service thereof	0	5	0

As the 73rd section is repealed, a like remark applies to these items as to those in the former paragraph. See p. 1231, ante.

Where the Act of Bankruptcy is the filing Petition for Arrangement under the Bankrupt Law Consolidation Act, 1849, Sect. 76.

Attending to search for petition for arrangement, and for proceedings thereunder	0	6	8
Paid search stamp	3	1	0

Where the Act of Bankruptcy is under the Bankrupt Law Consolidation Act, 1849, Sect. 77, against a Member of Parliament.

	£	s.	d.
Attending taking instructions to proceed under sect. 77, against A. B., having privilege of parliament	0	6	8
Affidavit of debt	0	6	8
Attending to get same sworn	0	6	8
Paid oath	0	1	6
Attending to file same in one of the superior courts at Westminster ..	0	3	4
Paid filing			
Writ of summons	0	14	6
Copy and service	0	5	0
Attending to search, if bond entered into, or appearance entered, and found none	0	6	8

Costs of summoning a Trader Debtor.

Attending creditor, taking instructions for affidavit of debt, and to summon debtor	0	6	8
Copy account and drawing notice for payment, and attending creditor when he signed the same	0	6	8
If account exceeds three folios, extra per folio 4d.			
Service thereof	0	5	0
If at a distance, usual agency charges to be produced for taxation.			
Affidavit of debt, and of service of account of notice	0	6	8
Copy account, and notice to annex to affidavit	0	2	6
If more than three folios, extra per folio 4d.			
Attending deponents to be sworn	0	6	8
Paid oath (if paid)			
Attending to file same, and for office copy (in London)	0	6	8
Paid for office copy			
Preparing summons and copy, and attending for commissioner's signature ..	0	6	8
Paid stamp and paper	0	2	7
Service of summons	0	5	0
Affidavit of service of summons	0	6	8
Attending court on return of summons, when, &c.	0	13	4

Where, on the hearing of Trader Debtor Summons, the Court orders the Costs to be paid by the Debtor, or to abide the Event of an Action.

Attending registrar to draw up order for costs	0	3	4
Attending for appointment to tax	0	3	4
Copy and service of order and appointment	0	5	0
If served at a distance, see General Rule.			
Copy for debtor	0	2	0
Bill of costs and copy to file	0	3	0
Attending taxing	0	6	8
Paid for allocatur stamp			
Letters, &c.	0	3	0

Costs where the Trader Debtor is required by the Court to enter into a Bond.

Having received notice that sureties would join in a bond, and also copies of their affidavits, attending making inquiries as to their sufficiency ..	0	13	4
This charge will be subject to increase, according to the distance of the sureties' residence; and where necessary, agency charges for the making such inquiries.			
Drawing exceptions to sureties	0	3	4
Service thereof on defendant's attorney	0	5	0
Attending court when sureties allowed or disallowed	0	13	4
Costs of affidavits in opposition to the allowance of the bond for want of sufficiency of sureties, the same allowance as for other special affidavits.			

Costs of Trader Debtor summoned, where the Court allows Costs to him on Dismissal of the Summons.

The trader debtor's personal expenses for travelling and loss of time, according to the scale allowed to witnesses			
--	--	--	--

£ s. d.

And if attended by a solicitor, and his costs allowed (which must be by special order of the court).

Attending taking instructions to attend the court on return of summons ..	0	6	8
Stamp and paper for deposition of good defence	0	2	7
Attending court on summons, and drawing up order	0	13	4
Attending for appointment to tax	0	3	4
Copy and service of order and appointment	0	5	0

If served at a distance, see General Rule.

Copy bill of costs for summoning creditor, per folio 4d.

Attending taxing	0	6	8
Paid allocatur stamp	0	3	0
Letters, &c.	0	3	0

Costs of Application under the Bankrupt Law Consolidation Act, 1849, Sect. 90, to prosecute a Petition in a particular District, or to consolidate two or more Petitions, or to transfer Petition from one District to another.

Instructions for affidavit to ground application to the senior commissioner, under sect. 90 of the Bankrupt Law Consolidation Act, 1849, to transfer, &c.

.. ..	0	6	8
-------	---	---	---

Drawing and fair copy same, 1s. per folio.

Attending deponent to be sworn	0	6	8
--------------------------------------	---	---	---

Paid oath	0	13	4
-----------------	---	----	---

Attending senior commissioner when order made, and drawing up same ..	0	3	6
---	---	---	---

Writing agent with order to file on the proceedings	0	6	8
---	---	---	---

Agent attending to file same	0	3	6
------------------------------------	---	---	---

Agent's letter in reply	0	3	6
-------------------------------	---	---	---

If the order be for transfer of petition from one district to another after adjudication.

Attending to search in — district court, if proceedings transmitted, and balloting for commissioner

.. ..	0	6	8
-------	---	---	---

Attending court to appoint official assignee, and fix days for the sittings ..	0	6	8
--	---	---	---

Attending messenger instructing him when necessary	0	6	8
--	---	---	---

Attending new official assignee, conferring as to the bankrupt's estate and effects, &c.	0	13	4
--	---	----	---

Section 90 is repealed, but application may be made to court now to transfer or consolidate petitions sustained, if to the senior commissioners, as formerly, and the charges will in all probability be similar to those under the former practice. See section 88, ante, p. 1202.

Application to enlarge Time for Adjudication.

Petitioning creditor not being prepared with sufficient evidence for adjudication, instructions to apply for extension of time

.. ..	0	6	8
-------	---	---	---

Drawing affidavit in support of application, and fair copy, per folio 1s.

Attending to get same sworn	0	6	8
-----------------------------------	---	---	---

Paid oath	0	13	4
-----------------	---	----	---

Attending court, order made	0	13	4
-----------------------------------	---	----	---

Similar charges will be allowed on application to dispense with the attendance of petitioning creditor or the witnesses to prove debt, trading or act of bankruptcy; and if order made, the following charges will ensue:—

Drawing and fair copy deposition as to petitioning creditor's debt (or trading or act of bankruptcy, as the case may be), each

.. ..	0	6	8
-------	---	---	---

Attending to be sworn	0	6	8
-----------------------------	---	---	---

Paid oath	0	6	8
-----------------	---	---	---

Costs where Petition not proceeded in within the prescribed Time, and another Creditor proceeds therewith (Sect. 96).

A petition for adjudication having been filed by A. B., attending to search if same had been adjudicated upon, or any order made to extend the time

.. ..	0	6	8
-------	---	---	---

Paid search	0	1	0
-------------------	---	---	---

Attending court for appointment to proceed with the petition	0	6	8
--	---	---	---

Examining witnesses as to trading	0	10	0
---	---	----	---

Ditto as to act of bankruptcy	0	10	0
-------------------------------------	---	----	---

Summoning witnesses, &c.	0	13	4
--------------------------------	---	----	---

The remaining costs as in other cases.

Section 96 is repealed, but some of the items may be useful as guides under the present practice.

Costs on Application for Warrant.

	£	s.	d.
Instructions for affidavit in support of application for warrant	0	6	8
Drawing same, per folio 1s.			
Fair copy, per folio 4d.			
Attending to read over and to get same sworn	0	6	8
Attending court, warrant granted	0	13	4
Drawing warrant when special, and attending for commissioner's signature and seal of court, per folio 1s.			
Fair copy, per folio 4d.			
Attending messenger, instructing him as to the execution of the warrant ..	0	6	8

Costs on Motion for Discharge from Custody.

Instructions to move for discharge	0	6	8
Drawing notice of motion	0	3	0
Copy and service thereof	0	5	0
Instructions for affidavit in support	0	6	8
Drawing same, per folio 1s.			
Ingrossing, per folio 4d.			
Attending to get same sworn	0	6	8
Attending to file same	0	3	4
Affidavit of service of notice of motion	0	6	8
Attending court on motion and drawing up order	0	13	4

Costs of opposing the above Motion.

Having received notice of motion, search for affidavit in support, and be- speaking office copy	0	6	8
Paid for same	0	6	8
Attending taking instructions for affidavit in opposition	0	6	8
Drawing same, per folio 1s.			
Fair copy, per folio 4d.			
Attending to get same sworn	0	6	8
Attending to file same	0	3	4
Attending court on motion	0	13	4

Bankrupt's Costs of disputing Adjudication.

Attending you on your having been served with copy of adjudication, taking instructions to show cause against same	0	6	8
Drawing notice of intention to dispute adjudication	0	5	0
Two fair copies for service	0	2	0
Service on petitioning creditor or his solicitor	0	5	0
Ditto on registrar	0	5	0
Attending court to obtain copies of the depositions on which adjudication was made	0	3	4
Paid for same	0	6	8
Perusing and considering depositions	0	6	8
Examining witnesses in disproof of trading and act of bankruptcy (if any produced)	0	10	0
Preparing and serving summons, each witness	0	6	8
Paid them			
Costs of brief, and counsel's fee where requisite to employ counsel ..			
Attending court	1	0	0

Petitioning Creditor's Costs on Bankrupt disputing Adjudication.

The bankrupt having served notice of disputing the adjudication, summoning the witnesses to attend sitting to prove petitioning creditor's debt, trading and act of bankruptcy (or such of them as shall be disputed), for pre- paring and serving summons, each witness	0	6	8
---	---	---	---

If it be requisite to give new evidence of these matters, special attend-
ances will be allowed to examine witnesses as to the facts they can
prove, the charges for which, and for summoning them, will be in
the discretion of the taxing officer, according to the special circum-
stances; and if it be necessary to employ counsel to support the
adjudication, the usual charges for brief and counsel's fees will be
allowed.

	£	s.	d.
Attending court when adjudication confirmed (or annulled)	1	0	0
Court fee, and attending (in London)	0	13	10
Attending to bespeak and afterwards for office copy proceedings	0	3	4
Paid for same			

Costs on Bankrupt's Application for Discharge from Custody after Surrender.

Instructions for and drawing notice of bankrupt's intention to apply for discharge	0	6	8
Attending for or writing gaoler for copy causes	0	6	8
Paid for same			
Copies of notice for service on attornies to detaining creditors, each	0	1	0
Service of notice on each creditor	0	5	0
Drawing and fair copy affidavit of service, and attending to be sworn	0	6	8
Attending court when discharge ordered, and drawing order	0	13	4
Service thereof on gaoler when not served in court	0	5	0

These costs will not be allowed out of the estate, unless by order of the court.

Costs on Special Sitings for Examination of Parties, &c.

Attending assignees, advising and receiving instructions to apply for sitting to examine A. B. as to, &c.	0	6	8
Attending court to get sitting appointed and to obtain summons	0	6	8
Summons and service, each witness	0	6	8
Attending court and examining witnesses	1	0	0
Clerk's attendance to take down examination	0	5	0
Court fee, and attending (in London)	0	13	10

In special cases a brief will be allowed for counsel, and where counsel may not be employed, the preparing a minute for the solicitor's own use in court will be allowed, if so ordered by the court.

Attending to bespeak and afterwards for copy proceedings	0	3	4
Paid for same			
Paid witnesses (as per Scale, pp. 1283, 1284, post)			

Costs under the Bankrupt Law Consolidation Act, 1849, Sect. 121, for substituted service of Summons where Person keeps out of the way to avoid Service.

Several attendances to serve summons without effect, when it appearing that the party was keeping out of the way, and could not be personally served, instructions to apply for substituted service	0	13	4
Drawing and fair copy affidavit of facts, and that due pains had been taken to effect personal service, per folio 1s.			
Attending court for order for substituted service, and to draw up order, and indorsing summons	0	13	4

Costs of Debtor to Bankrupt's Estate on his Attendance upon Summons and admitting Debt.

Attorney's attendance, reading over and explaining admission, and attesting same	0	6	8
--	---	---	---

If such attorney at the same time attest more than one admission, 6s. 8d. for the first; and all further, 3s. 4d. each up to 11.; and beyond that number, such sum as the master or registrar shall in his discretion think proper.

Costs from Choice of Assignees to Audit,

Attending to bespeak and for copy bankrupt's balance-sheet for creditors' assignees	0	6	8
Perusing same and attending assignees, consulting and advising thereon	0	13	4
Attending court on last examination, and clerk	1	5	0
Perusing and examining proof sent from a distance, exhibiting same, and returning, each	0	2	6
Court fee, and attending (in London)	0	13	10
Attending to bespeak and for copy proceedings	0	3	4
Paid for same			
The official assignee having sent his account, perusing same	0	6	8
Attending creditors' assignee thereon	0	13	4
Preparing creditors' assignee's affidavit, whether or not he had received or paid any sums on account of the estate	0	6	8

	£	s.	d.
Attending him to be sworn	0	6	8
Paid oath	0	1	6
Letter to him therewith	0	3	6
These charges are only allowed when the assignee lives at a distance, and does not attend the sitting.			
Attending court on audit	1	0	0
Court fee, and attending (in London)	0	13	10
Attending to bespeak and for copy proceedings	0	3	4
Paid for same	0	6	8
Attending taxing	0	6	8
Or more, in the discretion of the taxing officer, according to the length of the bill, or the time occupied.			
Court fee, and attending (in London)	0	13	10
Paid for office copy bill, as taxed	0	13	10
Paid for allocatur stamp	0	10	0
Letters, &c.	0	10	0

Costs of Sitting for Dividend.

Attending official assignee, and subsequently the court, to get dividend sitting appointed (if not appointed when audit fixed, or at the audit) ..	0	6	8
Attending court on divided meeting, and clerk	1	5	0
Perusing and exhibiting proof sent from a distance, and returning securities, each	0	2	6
Court fee, and attending (in London)	0	13	10
Attending to bespeak and for copy proceedings	0	3	4
Paid for same	0	6	8
Making out three dividend lists, signing and delivering same to official assignee, 1s. 6d. each creditor to 100, and 1s. for all above.			

If a second or subsequent dividend, two-thirds of the above charges (viz. 1s. and 8d.), but the gross charge at the discretion of the taxing officer.

New proofs at the second or subsequent dividend, to be allowed 1s. 6d. in addition.

NOTE.—If the lists are not delivered to the official assignee within ten days after the sitting, or within such further time as the commissioner may allow, these charges will be disallowed, and the court may direct the official assignee to prepare the lists.

Attending taxing	0	6	8
Court fee, and attending (in London)	0	13	10
Paid for allocatur stamp	0	5	0
Letters, &c.	0	5	0

Bankrupt's Costs of Certificate.

Instructions to attend sitting for certificate, perusing balance-sheet and proceedings	0	13	4
When necessary, attending registrar for appointment of sitting, and attending to instruct messenger to advertise and give notice to assignee's solicitor	0	6	8
Paid messenger as a deposit the following fees, which will be returned if the court orders the costs of certificate sitting to be paid out of the estate ..	3	12	4
Drawing advertisement of certificate sitting, and attending to			
insert	0	6	8
Paid insertion	0	10	6
Assignee's solicitor's fee on sitting, and clerk	1	5	0
Messenger's ditto	0	2	6
Court fee (in London)	0	10	6
Drawing advertisement of certificate being allowed or suspended, and attending to insert			
Paid insertion	0	6	8
	0	10	6
	£3	12	4
Attending court on certificate	1	0	0
Letters, &c.	0	5	0

Briefs and counsel's fees will be allowed when requisite.

Assignees' Costs on Certificate.

	£	s.	d.
Attending assignees and taking instructions on notice of sitting for allowance of certificate	0	6	8
*Attending court on certificate, and clerk (including drawing and ingrossing certificate, &c.)	1	5	0
*Court fee, attending to pay same	0	13	10
Attending for copy proceedings	0	3	4
Paid for same			

The items marked * are not to be charged, except where the certificate fees are paid out of the estate, as they are included in the deposit made with the messenger on appointing the sitting.

When requisite to oppose by counsel, briefs and counsel's fees will be allowed.

Costs of Application to commence, prosecute or defend Action at Law or Suit in Equity, under Sect. 153 of the Bankrupt Law Consolidation Act, 1849.

Attending the assignees, taking instructions to apply to the court for leave	0	6	8
Attending court, leave granted, drawing and fair copy order	0	13	4
If special, drawing and copying order, 1s. per folio.			

Costs of Application for Leave to compound Debts or submit Differences and Disputes to Arbitration.

Attending the assignees, taking instructions to apply for leave	0	6	8
Attending court to make application, when order made, drawing same, &c. ..	0	13	4
If special, as above			

If the court should direct notice to creditors, or make the order subject to any condition as to obtaining the consent of creditors, or of any proportion of them, then such costs of carrying the order into effect as the taxing officer shall in his discretion think reasonable.

Costs of Briefs.

Instructions for brief	0	6	8
(Allowed only when counsel employed.)			
Drawing same, per sheet (each sheet to contain ten folios)	0	6	8
Fair copy, per sheet	0	3	4
Fee to counsel and clerk			
Attending him	0	6	8
Where consultation or conference is necessary, attending to appoint same ..	0	6	8
Fee to counsel and clerk			
Attending consultation or conference	0	13	4

Costs of Cases for Opinion of Counsel.

Instructions for case	0	6	8
Drawing same, per sheet of ten folios	0	6	8
Fair copy, per sheet	0	3	4
Fee to counsel and clerk			
Attending him	0	6	8
Attending for and perusing opinion	0	6	8
Attending client, reading over opinion, and conferring with him thereon ..	0	6	8

Costs of Sale of Bankrupt's Real or Leasehold Estate.

When abstract perused, for every three brief sheets	0	6	8
Conferring with the assignees, taking instructions for sale	0	6	8
Drawing and fair copy particulars of property to be offered for sale ..	0	6	8
If exceeding five folios, 1s. per folio extra.			
Perusing documents in order to prepare special conditions of sale (or at the discretion of the taxing officer)	0	13	4
Instructions for conditions of sale	0	6	8
Drawing conditions of sale, per folio 1s.			
Fair copy, per folio 4d.			
Attending settling conditions, where other parties interested	0	6	8
Copy for auctioneer per folio 4d.			
Attending him therewith and correcting proof	0	6	8

	£	s.	d.
Attending giving information to parties who applied for particulars ..	0	13	4
Attending the sale	1	0	0
If at a distance, in the discretion of the taxing officer.			
Instructions for abstract	0	6	8
Drawing same, per sheet of ten folios	0	6	8
Fair copy for purchaser, per sheet	0	3	4
Where there is a previous abstract, to the extent of that abstract fair copying only will be allowed.			
Attending to deliver abstract	0	6	8
Attending to produce deeds to enable purchaser's solicitor to verify abstract	0	6	8
Perusing and considering his observations and requisitions on title, and drawing and fair copying replies thereto (this will vary according to circumstances).			
Perusing draft conveyance, per skin of fifteen folios	0	5	0
Copy to keep, per folio 4d.			
Attending to return draft approved	0	6	8
Examining ingrossment, per skin	0	3	4
Attending execution by each party	0	6	8
Attending settling	0	13	4
Solicitor's fee attending the official assignee to see the purchase money paid into the bank (where it exceeds 500 <i>l.</i>)	1	0	0
Letters, &c.	0	10	0

Costs of taking Mortgagee's Account—Mortgagee's Solicitor's Bill.

A. B. having become bankrupt, attending you and consulting thereon, perusing your security and account, and taking instructions to obtain sale of the mortgaged premises				0	13	4
Attending court for appointment to take mortgagee's account				0	6	8
Letter to assignee's solicitor to apprise him thereof				0	3	6
The like to the mortgagee				0	3	6
Drawing affidavit of mortgagee and account of principal and interest, per folio 1 <i>s.</i>						
Fair copy, per folio 4d.						
Attending deponent to be sworn				0	6	8
Attending court on taking the account and obtaining order for sale				0	13	4
Drawing order for sale, per folio 1 <i>s.</i>						
Fair copy, per folio 4d.						
Court fee, and attending (in London)				0	13	10

Assignee's Costs on taking Mortgagee's Account.

Attending you on being served with appointment to take mortgagee's account, and conferring thereon	0	6	8
Attending mortgagee's solicitor, perusing and considering security, and taking extracts therefrom	0	13	4
Attending court on the accounts being taken and sale ordered, same to be under the conduct and control of the assignees	0	13	4

(For Costs of sale, p. 1288).

Registering Assignee's Appointment where Bankrupt had Freehold or Leasehold Property in a Register County (Sect. 143).

Instructions for memorial	0	6	8
Drawing same and fair copy, per folio 1 <i>s.</i>			
Ingrossing, per folio 8d.			
Parchment	0	2	6
Attending attesting	0	6	8
Attending to register proceedings	0	6	8
Paid			
Attending for certificate of registration	0	6	8

Petitioner's Costs on Petition.

Instructions for petition	0	6	8
Drawing same, per folio 1 <i>s.</i>			
Fair copy to present, per folio 4d.			
Attending reading over, and attesting signature of petitioner, each	0	6	8
Copy petition for the court, at per folio 4d.			
Copies for service, each, per folio 4d.			

	£	s.	d.
Common service of petition, each	0	5	0
Special service (according to circumstances)			
Attending registrar to present petition, to get petition answered, and for seal of the court	0	6	8
Attending to file petition after service	0	3	4
Affidavit of service	0	5	0
Instructions for affidavit in support of petition	0	6	8

† No instructions where the solicitor or his clerk makes the affidavit; ;
no fees allowed to counsel to settle affidavit, except in very special cases.

Drawing same, per folio 1s.

Ingrossing same, per folio 4d.

Attending reading over, and to be sworn 0 6 8

Attending to file same 0 3 4

Attending to search for affidavits in opposition, to bespeak office copies, and for same 0 6 8

Paid search stamp 0 1 0

Paid for office copies

Brief copies of petition, and of affidavits (except affidavits of service), and of all other necessary documents for counsel, per brief sheet of ten folios 0 3 4

Drawing observations, and fair copy for counsel, per brief sheet .. 0 10 0

‡ In which all copies of documents inserted to be charged 4d. per folio only.

Fee to counsel

Attending him 0 6 8

Attending court when petition heard 0 13 4

Court fee and attending (in London) 0 13 10

Drawing order, per folio 1s.

Fair copy, per folio 4d.

Attending settling same 0 6 8

Ingrossing same, per folio 4d.

Attending the registrar to pass same 0 6 8

Copy of order for service (when necessary to be served), at per folio 4d.

Common service 0 5 0

Special service (according to circumstances)

Attending for appointment to tax, copy and service (where opposing party is entitled to attend taxation) 0 5 0

Attending taxing 0 6 8

Ditto respondent's costs 0 6 8

Court fee, and attending (in London) 0 13 10

Letters, &c. 0 10 0

Paid for allocatur stamp

Respondent's Costs on Petition or Motion.

Instructions to oppose 0 6 8

Attending to search for and to bespeak office copies of affidavits filed in support and for same 0 6 8

Paid search 0 1 0

Paid for office copies

Instructions for affidavit in answer 0 6 8

Drawing same, per folio 1s.

Ingrossing same, per folio 4d.

Attending deponent, reading over, and to be sworn 0 6 8

Attending to file same, and for office copies 0 6 8

Paid for office copies

Brief copies of petition, affidavits and other necessary documents for counsel, per brief sheet, ten folios 0 3 4

Drawing and fair copy observations, per brief sheet 0 10 0

(See note, supra, marked ‡.)

Fee to counsel

Attending him 0 6 8

Attending court, either of commissioners, of the Lord Chancellor or Lords Justices, petition or motion heard 0 13 4

Attending to pass order 0 6 8

Copy order for service (where the duty of carrying the order into effect falls on the respondent), per folio 4d.

	£	s.	d.
Common service	0	5	0
Special service (according to circumstances)			
Attending for appointment to tax, copy and service (where petitioner is entitled to attend the taxation)	0	5	0
Attending taxing	0	6	8
Ditto petitioner's costs	0	6	8
Letters, &c.	0	10	0
Paid for allocatur stamp			

Costs of Motion.

Drawing and fair copy notice of motion to be served, per folio 1s.			
Making short note of motion, and attending registrar therewith, previously to the sitting of court, pursuant to the 28th rule	0	3	4
Instructions for affidavit in support of motion	0	6	8
(See note, supra, marked †).			
Drawing same, at per folio 1s.			
Ingrossing, at per folio 4d.			
Attending reading over and to be sworn	0	6	8
Paid oath			
Copy affidavit for service with the notice of motion, per folio 4d.			
Service of notice of motion and of copy affidavit	0	5	0
If special, according to circumstances.			
Attending to file affidavit and bespeak office copy	0	6	8
Affidavit of service	0	5	0
Paid for office copy			
Brief copy affidavits for counsel, per brief sheet of ten folios	0	3	4
Copy notice of motion to annex	0	1	0
If more than two folios, 4d. per folio.			
Drawing and fair copy observations, per brief sheet of ten folios	0	10	0
(See note, supra, marked †.)			
Paid fee to counsel			
Attending him	0	6	8
Attending court on motion	0	13	4
Court fee and attending (in London)	0	13	10
Drawing order, per folio 1s.			
Attending settling same	0	6	8
Ingrossing same, per folio 4d.			
Attending to pass order	0	6	8
Copy to serve, where necessary, per folio 4d.			
Service thereof	0	5	0
Special service (according to circumstances)	0	5	0
Letters, &c.	0	5	0

Costs of Petition for Arrangement under the Control of the Court (Sect. 211).

Instructions for petition for arrangement	1	0	0
Examining witnesses as to trading, &c.	0	10	0
Searching for prior petition for adjudication, and paid	0	7	8
Drawing petition	0	10	0
Stamp and parchment	5	1	0
Attesting petitioner's signature	0	6	8
Affidavit of verification	0	6	8
Attending to swear same	0	6	8
Attending filing petition and attending to ballot	0	6	8
Fair copy for official assignee, at per folio 4d.			
Fee on petition	1	0	0
Drawing and fair copy statement of assets	0	6	8
(Or more, at the discretion of the taxing officer.)			
If same be referred, as in the London district, to official assignee, for his inquiry and certificate that there are assets amounting to 200l.—Attending him thereon for same, and subsequently attending court to file same, and attending commissioner with certificate, and attending appointment to open, and on official assignee, with deposit as ordered	0	13	4
Summons and summoning witness to prove trading	0	6	8
Attending to bespeak certificate of cause of detention (where petitioner is in custody), and afterwards for same	0	6	8

	£	s.	d.
Paid for same			
Fee on opening	1	0	0
Court fee, and attending (in London)	0	13	10
Paid for copy proceedings			
Attending	0	3	4
Attending court on application that messenger or official assignee take possession of petitioner's effects, drawing order, and attending to get same signed	0	13	4
Attending the messenger, instructing him as to possession, notices, &c. ..	0	6	8
Attending official assignee, conferring and informing him of petitioner's dealings and estate	0	13	4
Fair copy list of creditors for messenger, with address (according to length), per folio 4d.			
Attending him therewith	0	3	4
Instructions for proposal	0	6	8
Drawing same, per folio 1s.			
Fair copy to file, per folio 4d.			
Other copies, where required, per folio 4d.			
Attending petitioner attesting his signature	0	6	8
If accounts prepared by an accountant—Perusing and considering the accounts prepared for filing, and attending petitioner thereon, and conferring	0	13	4
If accounts prepared by the solicitor—Drawing accounts for filing, per folio 1s.			
Fair copy to file with petition, per folio 4d.			
Other copies, if required, per folio 4d.			
Attending petitioner attesting his signature thereto and to duplicate ..	0	6	8
Attending filing one part in court, together with proposal, and attending official assignee with duplicate	0	6	8
Attending to bespeak, and for office copy same	0	3	4
Paid for same			
Attending first sitting, when proposal assented to and resolutions adopted..	1	0	0
Clerk's attendance	0	5	0
Exhibiting proofs from a distance, each	0	2	6
Court fee, and attending (in London)	0	13	10
Paid for copy proceedings			
Attending for same	0	3	4
Making list of creditors who did not attend, for messenger to summon them to second sitting (according to length), per folio 4d.			
Attending messenger, instructing him as to notice to be served on creditors of second sitting	0	3	4
Attending second sitting, when resolutions of first sitting confirmed and proposal assented to	1	0	0
Clerk's attendance to take proofs	0	5	0
Examining and exhibiting proofs sent from a distance, each	0	2	6
If the resolution should not be signed on its confirmation at the sitting, and the solicitor attends to obtain the commissioner's signature subsequently	0	13	4
If the resolutions exceed ten folios, for drawing same (such part as is drawn), 1s. per folio, and fair copy 4d.			
Court fee, and attending	0	13	10
Paid for copy proceedings			
Attending for same	0	3	4
If either at the first or second sitting the court adjudge the petitioner bankrupt, and adjourn the proceedings to the public court, drawing special order and ingrossing, per folio 1s. The subsequent costs will be the same as petitioning creditor's costs after adjudication, except that no attendance on the bankrupt's surrender, or to get sittings appointed, will be allowed.			
Attending taxing messenger's bill	0	3	4
Attending taxing petitioner's bill of costs	0	6	8
Paid court fee, and attending	0	13	10
Paid for allocatur stamp			
Letters, &c.	0	3	4
Section 211 is repealed. See p. 1231.			

Costs under Sect. 220.

£ s. d.

A difficulty having arisen in the execution of the resolution or agreement by reason of &c., instructions to apply for special sitting	0	6	8
Attending court to obtain appointment for special sitting	0	6	8
Drawing circular to send to the creditors informing them of sitting ..	0	3	6
Copies to send, each	0	1	0
Attending sitting	1	0	0
Clerk	0	5	0
Court fee, and attending (in London)	0	13	10
Attending for copy proceedings	0	3	4
Paid for same			

Section 220 is also repealed. See p. 1231.

Costs of Certificate of Arranging Debtor (Sect. 221).

The resolution and agreement having been carried into effect, and the creditors satisfied, instructions to apply for certificate and attending registrar for appointment of sitting	0	6	8
Drawing notice to trustees	0	5	0
Copy and service thereof, each	0	5	0
Affidavit of service, when required	0	5	0
Drawing affidavit in support of application, per folio 1s.			
Ingrossing, per folio 4d.			
Attending to swear and to file same	0	6	8
Drawing certificate in the form of schedule, and ingrossing	0	5	0
Paid for parchment			
Attending court, certificate granted	1	0	0
Court fee, and attending	0	13	10
Letters, &c.	0	5	0

The same charges, mutatis mutandis, for certificate that official assignee had fully performed his trust, if applied for at a different time.

Section 221 is also repealed. See p. 1231.

Costs of Arrangement by Deed (Sect. 224).

Instructions for deed of arrangement	0	6	8
Drawing same, per folio 1s.			
Fair copy, per folio 4d.			
Ingrossing, per folio 8d.			
Attesting execution by each party	0	6	8
Six-seventh of the creditors having executed the deed, drawing and ingrossing certificate thereof, to be signed by trustees	0	5	0
Attending attesting signature	0	6	8
Copy account to be appended thereto, per folio 4d.			
Drawing and ingrossing affidavit of trader, verifying accounts, and certificate of trustee	0	6	8
Attending to be sworn	0	6	8
Drawing notice of applying to the court for certificate of the deed having been executed by requisite proportion of creditors, to be served on the creditors who had not executed same	0	5	0
Copy and service on each creditor, with the necessary affidavit of service ..	0	6	8
Instructions for petition for certificate	0	6	8
Drawing same, per folio 1s.			
Ingrossing, per folio 4d.			
Paid stamp, &c.	10	1	0
Attesting same	0	6	8
Attending to file	0	6	8
Attending court on petition, certificate granted	0	13	4
Court fee, and attending (in London)	0	13	10
Letters, &c.	0	10	0

Section 224 is also repealed. See p. 1231.

Composition after Bankruptcy (Sect. 230).

Instructions for meeting of creditors to consider offer of composition ..	0	6	8
Drawing advertisement and fair copy, per folio 1s.			
Attending to insert same in Gazette	0	6	8

	£	s.	d.
Paid insertion			
Attending meeting, drawing resolution of creditors, and memorandum, when nine-tenths present assented and signed their assent, and second meeting appointed	1	0	0
Clerk attending	0	5	0
Paid court fee (in London), and attending	0	13	10
Drawing advertisement of second meeting, per folio 1s.			
Attending to insert same in Gazette	0	6	8
Paid			
Attending meeting, when nine-tenths present assented to offer, and signed their assent in writing	1	0	0
Clerk	0	5	0
Paid court fee (in London), and attending	0	13	10
Drawing petition to annul, per folio 1s.			
Ingrossing, per folio 4d.			
Attesting petitioner's signature	0	6	8
Instructions for affidavit in support of petition	0	6	8
Drawing same, per folio 1s.			

(See note, ante, marked thus.*)

Ingrossing, per folio 4d.			
Attending to file petition and affidavits	0	6	8
Attending court, order made to annul on payment of amount of composition	0	13	4
Drawing order and fair copy, per folio 1s.			
Attending settling order	0	6	8
Ingrossing order, per folio 4d.			
Attending to pass same	0	6	8
Court fee on petition, and attending (in London)	0	13	10
Affidavit of conformity	0	6	8
Attending to be sworn	0	6	8
Paid oath			
Letters, &c.	0	5	0

Section 230 is also repealed. See p. 1231.

Costs of Personal Service of Notice on Creditors residing Abroad (Sect. 231).

Drawing notice to serve on creditors abroad	0	5	0
Copy for service, each	0	1	0
Drawing and ingrossing affidavit of personal service for agent to swear	0	6	8
Writing agent, with special instructions as to service and affidavit	0	5	0
Paid agent's charges for services, &c.			

Section 231 is also repealed. See p. 1231.

Costs of Taxation.

Appointment to tax, copy and service	0	5	0
(This item is not allowed on ex parte taxations.)			
Attending taxing (amount at the discretion of the taxing officer)			
Court fee on taxation, and attending (in London)	0	13	10
Paid for allocatur stamp			

Allowances to Witnesses per Day, inclusive of all except Travelling Expenses.

	If resident in the town in which the Court is held.	If resident at a distance from the Court, subsistence in these cases included.
	£ s. d.	£ s. d.
1. Bankers, merchants, esquires, and gentlemen	1 1 0	1 1 0
		to
		2 2 0
2. Professional men	1 1 0	2 2 0
		to
		3 3 0
3. Auctioneers and accountants	1 1 0	1 1 0
		to
		2 2 0

Allowances to Witnesses per Day, &c.—continued.

	If resident in the town in which the Court is held.	If resident at a distance from the Court, subsistence in these cases included.
	£ s. d.	£ s. d.
4. Notaries	1 1 0	2 2 0
5. Engineers and surveyors	1 1 0	1 1 0
6. Clerks of attorneys or other persons	0 10 6	3 3 0
7. Master tradesmen, shopkeepers, yeoman farmers	1 1 0	0 15 0
8. Artizans, mechanics, &c.	0 10 6	1 11 6
9. Females, according to station in life	0 15 0	0 15 0
10. Police inspector	0 7 6	1 1 0
11. Police constable	0 5 0	0 7 6
The travelling expenses of the first five classes of witnesses will be allowed at the rate of 7 <i>d.</i> per mile, and the others at 5 <i>d.</i> per mile one way, or travelling expenses actually incurred, in the discretion of the taxing officer; the travelling expenses of female witnesses, 7 <i>d.</i> or 5 <i>d.</i> , according to their station.		
Governors of gaols bringing up prisoners	0 5 0	0 10 0
Travelling expenses of gaoler bringing up prisoner under warrant in addition to the above allowance, 7 <i>d.</i> per mile one way for each (himself and prisoner), or the amount actually paid, and for the prisoner's safe custody and refreshment, in the discretion of the taxing officer.		
	0 3 0	0 7 6
	0 10 6	1 1 0
		1 11 6

Costs of Petition under the 7 & 8 Vict. c. 70.

	£ s. d.
Instructions for petition	1 0 0
Search for prior petition, and paid	0 7 8
Drawing petition proposal and schedule to annex, per folio 1 <i>s.</i>	
Fair copy, per folio 4 <i>d.</i>	
Paid for parchment	0 2 6
Attending reading over and attesting same by petitioner	0 6 8
Attending attesting signatures of concurring creditors, each	0 6 8
Affidavit of verification of petition	0 6 8
Drawing affidavit of witnessing creditor's signatures, per folio, 1 <i>s.</i>	
Fair copy, per folio 4 <i>d.</i>	
Attending to be sworn	0 6 8
Attending to file petition and affidavits, and to ballot for commissioner	0 6 8
Copies petition for the court, per folio 4 <i>d.</i> each.	
Attending commissioner for appointment for private examination prior to appointing first meeting of creditors	0 6 8

	£	s.	d.
Attending commissioner on private examination, when he examined petitioner and witnesses, and appointed first meeting of creditors	0	13	4
Summons, and summoning the witnesses to such examination, each	0	6	8
Making list of creditors with addresses for messenger, per folio 4d.			
Attending him, instructing him as to service	0	3	4
Attending first meeting of creditors when the requisite number assented to the proposal, and second meeting appointed, and clerk	1	5	0
Making list of creditors with addresses to be personally served with notice of second meeting, per folio 4d.			
Attending messenger, instructing him as to service	0	3	4
The messenger being unable to serve several of the creditors personally, instructions for affidavit to ground application to commissioner for substituted service	0	6	8
Drawing same, and fair copy, per folio 1s.			
Attending to be sworn	0	6	8
Oath			
Attending commissioner when application granted	0	13	4
Attending second meeting of creditors when proposal assented to and a trustee was appointed, self, and clerk	1	5	0
Several attendances on official assignee as to his report of the several meetings, and to procure appointment for the commissioner to consider the same	0	13	4
Attending court when report confirmed and certificate of protection granted	1	0	0
Attending taxing	0	6	8
Letters, &c.	0	10	0

GENERAL RULES.

- Solicitors not residing where the court sits will not be allowed for loss of time or travelling expenses in attending a sitting of the court personally, instead of by agent, unless they obtain from the court, before or at the time, its sanction for their personal attendance, and a memorandum from the registrar of such sanction. The usual agency charges will be allowed.
Solicitors attending as such, per day 2 2 0
If from a distance, for subsistence 1 1 0
(Or in the discretion of the taxing officer, and travelling expenses 7d. per mile, or the sum actually paid.)
- More than one attendance to open petition will not be allowed unless ordered by the court, and memorandum be obtained to that effect from the registrar.
- Attendances upon the court for necessary purposes not included in the foregoing scale, each 0 6 8
Attending court on each sitting, not otherwise provided for 1 0 0
Clerk's attendance at each sitting, when required 0 5 0
If by agent 2l. 5s.
- Summons and service, each witness 0 6 8
If the distance be more than three miles, 5d. per mile extra, or a further sum, in the discretion of the taxing officer, according to circumstances.
In cases of great distance, the service must be by agent, unless otherwise sanctioned.
- General attendances, each 0 6 8
Long and special attendances 0 13 4
(Or more, in the discretion of the taxing officer.)
- Writing letters, each, special 0 5 0
Ditto, common 0 3 6
Ditto, circulars 0 1 6
(If above twenty, 1s. each; if numerous, they must be printed.)
- Drawing advertisements and copy, not exceeding five folios 0 6 8
Exceeding five folios, 1s. per folio.
Attendances to insert advertisements (see note, ante) 0 6 8
Adjourned sittings are not to be advertised unless specially ordered by the court.
- Extra allowances for length of sittings, or other increased allowances, must have the sanction of the court, and a memorandum to that effect obtained from the registrar, or all such discharges will be disallowed.

- 9 Vouchers must be produced on taxation for all payments, or they will be disallowed.
10. Bills of costs must be written upon draft paper lengthwise, on one side only, *and dates must be furnished to each item*, such dates not to be written in the margin, which is to be left clear for taxation.
11. Ordinary Gazette advertisements of the sittings of the court to be prepared by the messenger, and inserted by him; special and other advertisements by the solicitor.
12. In very special cases, where counsel are not instructed to appear in court, a charge by the solicitor for the preparation of minutes of fact or evidence for his own use will be allowed, if so ordered by the court.
13. No charge is to be allowed for making copies for solicitors of their own bills of costs either before or after taxation, or for any unnecessary copies of proceedings.
14. In office copies each folio is to be counted and enumerated; each figure to count as one word.

MESSENGER'S COSTS.

To Choice of Assignees.

	£	s.	d.
Attending court until adjudication, and preparing warrant of seizure, and duplicate or duplicates, and all necessary papers	0	10	0
Executing warrant of seizure, at each distinct place where property seized	0	13	4
Or an attendance fee in the discretion of the taxing officer			
Making inventory of books and papers seized, delivering the books, papers and inventory to the official assignee, and taking receipt from him for each book and bundle of papers, such receipt to be produced	0	0	6
But the whole charge not to exceed	0	10	0
Service of duplicate adjudication on bankrupt and affidavit of service	0	5	0
Preparing summons to surrender, and service of same on bankrupt	0	6	8
Preparing advertisement for the Gazette, and attending to insert same	0	6	8
Paid insertion			
(No charge to be made for Gazette.)			
Possession from the day of executing the warrant of seizure, per day	0	5	0
(4s. of which is to be paid to the man in possession, and his receipt for same to be produced.)			
Notice to the solicitor of sitting for choice of assignees, and service thereof, attending the sitting, pens, paper, &c.	0	2	6
Notice of taxing, and service when required by the taxing officer to be given	0	2	0
Allocatur stamp			

Costs to Audit.

Notice to solicitor of sitting for final examination and service, attending the sitting, and supplying pens, paper, &c.	0	2	6
Preparing advertisement of audit, and attending to insert same in Gazette	0	6	8
Paid			
Preparing summons for assignees (whether one estate, or joint and separate estates), and service thereof on assignees (whether one or more)	0	7	0
Notice to solicitor of audit sitting, attending same, supplying pens, paper, &c.	0	2	6
Notice of taxing (when required)	0	2	0
Paid for allocatur stamp			

Costs of Dividend Sitting.

Preparing advertisement of dividend meeting, and attending to insert same in Gazette	0	6	8
Preparing summons for assignees, service thereof (whether one or more assignees), and the like on bankrupt, with affidavit of service if required	0	10	0
Notice to solicitor of dividend sitting, attending same, and supplying pens, paper, &c.	0	2	6
Paid for allocatur stamp			

Costs of Certificate Sitting.

Preparing advertisement of sitting for certificate, and attending to insert same in Gazette	0	6	8
Paid insertion			

	£	s.	d.
Notice to solicitor of sitting for certificate, service thereof, attending sitting, supplying pens, paper, &c.	0	2	6
Preparing advertisement of allowance of certificate, and attending to insert same	0	6	8
Paid insertion			

Costs under Petition for Arrangement.

Attending court when petition filed, and after, until protection granted ..	0	10	0
Taking instructions from solicitor as to service of notice to creditors of first sitting, filling up notices, and serving same, each creditor, including affidavit of service	0	1	0
Attending first sitting, pens, paper, &c.	0	2	6
Taking instructions from solicitor as to personal service of notice of second sitting on creditors who did not attend first sitting, filling up notices, and serving same personally, each creditor, including affidavit of service ..	0	3	0
If by agent, charges in the discretion of the taxing officer.			
Attending second sitting, pens, paper, &c.	0	2	6
Notice of taxation, when required	0	2	6
Paid for allocatur stamp			

General Rules as to Messenger's Bills (a).

Notice to solicitor of each public sitting, and service thereof, attendance at every sitting, and supplying pens, paper, &c.	0	2	6
Preparing warrant to bring up bankrupt from prison to surrender, or to be examined, attending for commissioner's signature, transmission thereof by post, unless personal service on the gaoler be specially ordered	0	13	4
Preparing warrant for arrest of bankrupt or witness, or any other person ..	0	13	4
(Special warrants will be prepared by the solicitor.)			
Executing warrant for arrest	1	0	0
Notice of taxing and service, when required by the taxing officer, to be given to the solicitor or assignees	0	2	0
If, in the execution of any of the business of messenger, he or his principal assistant, or his man, be directed to travel any considerable distance, the following additional charges will be allowed:—			
For the messenger's time, per day	1	0	0
Expenses of subsistence (when travelling)	0	10	0
For the messenger's travelling expenses, see Scale of Allowances to Witnesses; the higher scale of 7d. per mile for the messenger, and the lower scale of 5d. per mile for his principal assistant or man; if by water conveyance, the sum paid.			
For the messenger's principal assistant, for his time per day	0	10	0
Ditto expenses of subsistence when travelling	0	7	6
Ditto travelling expenses as above			
For the messenger's man's time per day, when travelling	0	5	0
Ditto expenses of subsistence when travelling	0	5	0
Ditto travelling expenses, as per Scale for the Witnesses, at the lower rate			
Bed hire for the man in possession, where there is no bed on the premises, per night	0	0	6
For summoning debtors, each debtor when required	0	1	0

Broker's Allowance (b).

For inventory and valuation of excepted articles, to the extent of 20l., 5l. per cent. on the value			
For inventory and valuation (if ordered by the court) of the remainder of the household furniture, tools and implements of trade, or of such part of such remainder as aforesaid as may be embraced in the order—			
For the first 100l.	2	10	0
For the next 400l. per cent.	1	5	0
All above	1	0	0

(a) In courts where on the 19th May, 1855, there were two messengers, the fees payable are those given by General Order, 23rd October, 1843, so long as either messenger remains in office. Where the debts are under 300l., or the debtor petitions *in formá pauperis*, see General Order, 6th November, 1861.

(b) See sect. 15, Act of 1861. Where debts are under 300l., or debtor petitions *in formá pauperis*, see General Order, 6th November, 1861.

£ s. d.

(This allowance to include all expenses, and any travelling within five miles of the court, and a fair copy of the inventory.)
For inventory of the stock-in-trade, and effects not included in the above, and also of such of the household furniture, tools and implements of trade, for a valuation of which no order is made by the court, a sum in the discretion of the registrar of the court from 10s. 6d. to 21l., according to the time and labour necessarily employed, and without reference to the number of items; and no further allowance will be made to the broker for any such inventory without the special order of the court, and no allowance will be made to the broker for an inventory of any estate or effects of the bankrupt, which is afterwards sold by such broker under the direction of the trade assignees: in such cases the allowance of the broker is deemed to be included in his charge as auctioneer
No allowance whatever will be made to the broker for any inventory not made and completed forthwith after the adjudication of bankruptcy, and before the sitting appointed for the choice of assignees, and produced to the court at such sitting.
Broker's travelling expenses will not be allowed in any case beyond forty miles; rate of allowance to be 7d. per mile.

Auctioneer's Charges, including all Expenses of Sale (a).

Sales by auction of goods, chattels and effects:—
10l. per cent. on the first 100l.
After to 1,000l. .. 5l. per cent.
After to 5,000l. .. 2l. 10s. per cent.
After to 10,000l. .. 1l. 5s. per cent.
If the above be sold by valuation, 2l. 10s. per cent. on the first 1,000l., and 1l. 5s. per cent. beyond.
Sales by auction, of estates, freehold, leasehold, &c. :—
5l. per cent. on the first 300l.
After to 1,000l. .. 2l. 10s. per cent.
After to 5,000l. .. 1l. per cent.
After to 10,000l. .. 10s. per cent.
If the above be sold by valuation, half the above charges; and if not sold, the expenses to be paid, and fee to the auctioneer to be allowed at the discretion of the taxing officer; or if bought in, and subsequently sold by private contract, by the negotiation of the auctioneer, half the above charges on sales by auction.
Farming stock 5l. per cent. on the first 100l., and 2l. 10s. on remainder. When sold by valuation, half the above charges.

Sales of Stock by Tender.

Not above 400l. 4l. per cent.
Above 400l. and under 1,000l. 3l. 10s. per cent.
Above 1,000l. and under 2,000l. 2l. 10s. per cent.
Above 2,000l. and under 5,000l. 2l. per cent.
Above 5,000l. and upwards 1l. 15s. per cent.
Expenses to be allowed, such as advertisements and printing, not exceeding 2l., or at the discretion of the taxing officer.

Accountant's Charges.

For preparing balance sheet, investigating accounts, &c., principal's time, per day of eight hours, including necessary affidavit	£	s.	d.
Chief clerk's time	2	2	0
Other clerks' time, per day of eight hours	1	1	0
		0	10
		to	
		0	15
		0	

CRANWORTH, C.
J. L. KNIGHT BRUCE, L. J.
G. J. TURNER, L. J.
EDWARD HOLROYD.
EDWARD GOULBURN.

(a) See sect. 15, Act of 1861, p. 1191. Where debts are under 300l., or debtor petitions *in formâ pauperis*, see General Order, 6th November, 1861, and General Order, 22nd May, 1862 (C.).

GENERAL ORDER.

MADE IN PURSUANCE OF "THE BANKRUPTCY ACT, 1854."

Thursday, the 19th day of June, 1856, in the 19th year of the reign of Her Majesty Queen Victoria.

The right honourable Robert Monsey, Lord Cranworth, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable the lord justice Sir James Lewis Knight Bruce, the right honourable the lord justice Sir George James Turner, Edward Holroyd, esquire, and Edward Goulburn, serjeant-at-law, two of the commissioners of her majesty's court of bankruptcy, doth hereby, in pursuance and execution of the powers of an act of parliament passed in the session of parliament holden in the 17th and 18th years of the reign of her present majesty, intituled "An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankrupts," and of all other powers enabling him in that behalf, order and direct that the order of the 3rd day of February, 1855, confirming the scale set forth in the rule numbered 130 of the rules and orders made in pursuance of "The Bankrupt Law Consolidation Act, 1849," be varied in so far as relates to the rate per cent. payable on debts collected and also on property realised, and that from the date of this order the scale shall be varied in manner hereinafter mentioned, that is to say; the per-centage payable on all debts collected beyond 5,000*l.*, and on all property realised beyond 5,000*l.* shall be at the rate of one-eighth per cent. instead of one-half per cent. allowed by the said scale.

CRANWORTH, C.

J. L. KNIGHT BRUCE, L. J.

G. J. TURNER, L. J.

EDWARD HOLROYD, Commissioner.

EDWARD GOULBURN, Commissioner.

See section 31, p. 1194, also General Order, 3rd February, 1855, p. 1268.

GENERAL ORDER.

MADE IN PURSUANCE OF "THE BANKRUPTCY ACT, 1854."

Tuesday, the 24th day of March, 1857.

The right honourable Robert Monsey, Lord Cranworth, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable the lord justice Sir James Lewis Knight Bruce, the right honourable the lord justice Sir George James Turner, Edward Holroyd, esquire, and Edward Goulburn, serjeant-at-law, two of the commissioners of her majesty's court of bankruptcy, doth hereby, in pursuance and execution of the powers of an act of parliament passed in the session of parliament holden in the 17th and 18th years of the reign of her present majesty, intituled "An Act for regulating Appointments to Offices in the Court of Bankruptcy, and for amending the Laws relating to Bankruptcy," order and direct that service of all writs, notices, summonses, orders, warrants, rules, documents and other proceedings not requiring personal service upon the party to be affected thereby, shall be made before seven o'clock in the evening, except on Saturdays, when it shall be made before two o'clock in the afternoon; and if made after seven o'clock in the evening on any day except Saturdays, the service shall be deemed as made on the following day, and if made after two o'clock in the afternoon on Saturday, the service shall be deemed as made on the following Monday. And doth further order and direct, that the offices of the chief registrar, accountant, and master of the court of bankruptcy in London, and the offices of the registrars of the district courts of bankruptcy shall be closed on Saturdays at two o'clock in the afternoon.

This order is to come into operation on the 15th day of April, 1857.

CRANWORTH, C.

J. L. KNIGHT BRUCE, L. J.

G. J. TURNER, L. J.

EDWARD HOLROYD, Commissioner.

EDWARD GOULBURN, Commissioner.

But see section 201, p. 1220.

GENERAL ORDERS.

MADE PURSUANT TO "THE BANKRUPTCY ACT, 1861."

(24 & 25 Vict. c. 134.)

It is ordered as follows, that is to say,—

As to Petitions.

Petitions to be addressed to commissioners in rotation.

Form of memorandum to be endorsed on petition for adjudication of bankruptcy under sect. 70, act of 1861.

1. Petitions for adjudications of bankruptcy filed in the court in London shall forthwith after the filing thereof be directed by the chief registrar or registrar acting for him to the commissioners of the court in rotation. A second petition by or against the same debtor, either alone or jointly with any other person or persons, shall be directed to the commissioner who shall have acted in the matter of the first petition, or to whom the same shall have been directed.

2. The memorandum required to be indorsed on a petition for adjudication of bankruptcy, before any adjudication shall be made under section 70 of "The Bankruptcy Act, 1861," shall be as follows:

"Take Notice."

"Within is a copy of a petition for adjudication of bankruptcy verified by the oath of the petitioner, and under the seal of her majesty's court of bankruptcy in London [or 'for the — district'] filed in the said court against you the within-named E. F. The said court has ordered that you do appear on this petition at or before the expiration of — days after the day of service thereof. The petition will be heard at the said court at — on the — day of — at which time and place you are to appear by yourself or your solicitor on such petition.

Dated the — day of — A.D.

(Seal of
the court.)

— Registrar.

— Solicitor in the matter of the within petition."

As to First Meeting of Creditors.

Place of first meeting of creditors, sect. 109, act of 1861.

3. If the petitioning creditor or any other creditor or the bankrupt desire that the first meeting of creditors under section 109 of "The Bankruptcy Act, 1861," should be held at any other place than the place where the court of bankruptcy having jurisdiction in the matter usually holds its sittings, application, supported by affidavit, must be made to the commissioner, within seven days after adjudication. If such application be by any other person than the petitioning creditor, one clear day's notice thereof must be given to the petitioning creditor.

Time within which a debtor petitioning for adjudication against himself must file the statement required by sect. 93, act of 1861.

4. The statement required to be filed in court under section 93 of "The Bankruptcy Act, 1861," by every debtor petitioning for adjudication of bankruptcy against himself, and verified by the oath of the petitioner, shall be so filed and verified by such debtor within three days after filing his petition, or within such further time as the commissioner may, under special circumstances, allow, and shall be in the form specified in the schedule to these orders annexed, and if such statement be not so filed and verified, the said petition shall be dismissed.

As to Judgment Debtor Summons.

Application for judgment debtor summons must be supported by affidavit, sects. 76—85, act of 1861.

5. Every creditor applying for a judgment debtor summons shall file an affidavit of debt, and such affidavit shall be in the form specified in the schedule 3 to these orders annexed.

6. Every judgment debtor summons shall be in the form specified in the schedule 4 to these orders annexed.

7. Every such summons shall be endorsed with a notice as follows:

Form of judgment debtor summons, sect. 76, act of 1861.

Notice to the Party Summoned.

Notice to be endorsed on the summons. See sects. 76—85, act of 1861.

"This summons is served upon you pursuant to the provisions of "The Bankruptcy Act, 1861," and is founded on an affidavit of debt which was filed in the court of bankruptcy in London [or for the — district, at —] on the — day of — 186—, and you are hereby informed that, if after service of this summons, or due notice thereof, you do not pay the debt and costs within mentioned, or secure or compound for the same to the satisfaction of the creditor, then, on your appearance to this

summons, or if you shall not appear, having no lawful impediment allowed by the court, and in either case, without the presentation of a petition for adjudication or other proceeding, the court may adjudge you bankrupt.

"This summons was issued by — of — solicitor for the plaintiff [*or* plaintiffs] within named [*or, if by a solicitor for a person entitled to receive money under a peremptory order, or interested in enforcing payment of it, alter accordingly*].

or,

"This summons was issued in person by the plaintiff [*or* plaintiffs] within named, who resides [*or* reside] at, &c. [*mention the city, town or parish, and also the name of the street and number of the house of the plaintiff's residence, if any such there be*]."

8. Every such summons is to be served personally between the hours of nine o'clock in the forenoon and nine o'clock in the afternoon, unless the court issuing the same shall in any case direct that service in some other manner shall be good service, in which case the order of court in that behalf shall be served in like manner as the summons; and such summons is to be served four days at least before the time for appearance therein mentioned, and within two months from the date thereof, including the day of such date, and not afterwards.

Service of summons, sect. 79, act of 1861.

As to Forms.

9. The several forms specified in schedules 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, inclusive, respectively to these orders annexed, for the several purposes therein stated, shall be observed, and used with such alterations as may be necessary to meet the circumstances of any particular case.

Certain forms to be as set forth in schedules to these orders.

As to Letters of Attorney.

10. Every creditor may by letter of attorney, which may be in the form set forth in schedule (19), authorize the official assignee in the bankruptcy, or any other person, to represent him at any meeting of the creditors, and to vote for him on any question submitted to the creditors at such meeting, or any adjournment thereof, and also in the choice of the creditors' assignee.

Letter of attorney to act for creditors.

11. Petitions may be printed on paper or parchment. Under special circumstances the commissioner or registrar may, if he shall think fit, receive a written petition.

Petitions.
[See G. O., 19th Oct. 1852, r. 41.]

As to the Messenger.

12. The official assignee in performing the duty required by section 108 of "The Bankruptcy Act, 1861," shall act by the messenger of the court, who shall in all respects, but subject to the directions of the court in any particular case, observe the directions of the official assignee in taking and retaining possession of the bankrupt's estate, and shall act as his deputy; and, after the appointment of the creditors' assignee, the messenger shall act under his instructions in keeping or discontinuing possession.

Messenger to act under official assignee, &c. s. 108, act of 1861.

13. Each messenger of the court of bankruptcy shall give security to the extent of 1,000*l.*, and such security shall be either by way of a joint and several bond, with two sureties to be approved of by the commissioner, to the chief registrar in the penal sum of 2,000*l.*,—or by way of the guarantee of any guarantee society established by charter or act of parliament in England. Where such security is by way of bond each messenger shall on the first day of January in every year or within one week then next following make a declaration in writing, to be filed with the chief registrar, that to the best of his knowledge and belief his sureties are alive and solvent, and in such declaration state to the best of his knowledge and belief any change of residence of any or either of such sureties. Where such security is by way of guarantee, the messenger shall within the like period produce and show to the chief registrar the receipt for the premium or premiums paid to such guarantee society during the preceding year.

Security by messengers, sect. 17, act of 1861.

Where such security is by way of bond, the messenger shall on pain of dismissal give immediate notice in writing to the chief registrar of the death or bankruptcy of any or either of his sureties, and shall in such case, if required,

Messenger to give notice of death of surety.

cause a new bond to be executed to the like amount by another surety or sureties.

Messenger to render account of fees to official assignee.

14. The messenger shall from time to time render to the official assignee an account of the fees due to him (according to the existing scale) and of payments made by him for assistance in each bankruptcy, and such bill shall be taxed by the proper taxing officer, who shall certify separately the amount of fees due and the amount of additional payments proper to be allowed. The messenger and creditors' assignee, if any, and if none the official assignee, may attend the taxation. The amount of such fees and additional payments shall be forthwith paid to the messenger by the assignee out of any monies belonging to the estate, or standing to its credit at the bank of England, and, if the same be insufficient, out of the first monies that shall come to his hands in respect of the estate. Each messenger shall quarterly, on the 13th of January, the 13th of April, the 13th of July, and the 13th of October in every year, transmit to the chief registrar an account of the fees received by him in the preceding quarter.

Surplus of fees.

15. On the 13th of October, 1862, and each succeeding 13th of October, every messenger shall render to the chief registrar an account of the fees received by him during the preceding year, and shall verify the same by oath, and after deducting his salary under the 32nd section shall pay over the surplus to the credit of the chief registrar's account at such time and in such manner as the chief registrar shall direct.

Inventory.

16. It shall be the duty of the messenger to make an inventory of the bankrupt's estate in cases where such inventory shall be deemed requisite by the official assignee. No broker shall be employed for the purpose. Where such inventory has not been made prior to the choice of creditors' assignee, the inventory shall only be made upon an express direction in writing from the creditors' assignee.

As to Matters to be heard in Chambers.

Business to be disposed of by commissioners in chambers, sect. 51, act of 1861.

17. The following matters may, unless the court shall in any case otherwise direct or allow, be heard and determined by the commissioner in chambers, that is to say,—

Trade debtor summons.

Judgment debtor summons.

Petition for adjudication of bankruptcy on the petition of a creditor.

Disputed adjudication by debtor.

Applications,—

To enlarge time for proceeding on petition for adjudication, or for bankrupt to surrender, or for last examination, or for leave to surrender, where time expired.

To release bankrupt from custody.

To pay taxes, or salary or wages, or sum in respect of apprentice fee.

To order letters to be re-directed or delivered to the official or creditors' assignee, or other person named in the order.

For leave to commence, prosecute or defend any action or suit.

For order to bankrupt to join in any conveyance, &c.

For assignees to deliver up conveyance or agreement for conveyance, or lease or agreement for lease, or agreement for purchase of estate, in case assignees decline or refuse to elect to take the same.

To take mortgagee's account.

For order under section 114.

Questions as to costs referred to commissioner by the taxing master.

To allow amendments, or copies or extracts of proceedings.

For investment of money or the sale or transfer of any stocks or securities belonging to the estate.

For appointing the bankrupt to superintend the management of his estate, or to carry on the trade for behoof of the creditors.

For sittings to examine parties or witnesses.

For order to mortgage or pledge any part of bankrupt's estate upon a resolution of creditors, under section 133.

For order to sell book debts under section 137, or for disposal or custody of books and papers, under section 138.

Any matter adjourned by the registrar for the consideration of the commissioner, under section 52, or any point or matter arising in the course of proceedings before the registrar, and stated by him in a certificate to the commissioner, and upon which any party is desirous of obtaining the opinion of the commissioner, under section 53.

But if in any of the aforesaid matters the contending parties shall all desire that any question be heard and decided in open court, or if the commissioner shall be of opinion that any matter before him ought to be so heard and decided, it shall be adjourned for that purpose.

18. The following matters may, unless the court shall in any case otherwise direct or allow, be heard and disposed of by the registrar in chambers, that is to say,—

Petitions for adjudication of bankruptcy.

Swearing affidavits.

Application for trader debtor's summons, or judgment debtor's summons.

Receiving the surrender of a bankrupt; granting protection thereupon.

Giving requisite directions for notices and advertisements, &c.

Auditing and passing accounts of assignees.

Proceedings for declaration and payment of dividends.

Any of the following matters, when uncontested:—

Admitting, expunging or reducing proof or claims; ordering payment of taxes or salary or wages, or sum in respect of apprentice fee; ordering amendments or inspection or copies or extracts of any proceedings, and taking mortgagee's accounts, and giving leave to mortgagee to bid.

Business to be disposed of by registrar in chambers, sects. 52, 53, act of 1861.

*As to Trust Deeds for Benefit of Creditors; Composition and Inspectorship
Deeds executed by a Debtor.*

19. In order to facilitate the making of entries under section 193, the attorney or solicitor or party producing such deed or instrument, may deliver to the registrar a memorandum containing the following particulars, or as near thereto as may be:—

Memorandum of particulars of deed to be entered by chief registrar, sect. 193, act of 1861.

Memorandum of Deed or other Instrument to be registered pursuant to "The Bankruptcy Act, 1861."

Title of deed, whether deed of assignment, composition or inspectorship.

Date of deed.

Date of execution by debtor.

Name and description of the debtor as in the deed.

The names and descriptions of the trustees or other parties to the deed, not including the creditors.

A short statement of the nature of the deed.

And such memorandum shall be signed by the attorney or solicitor or party producing the deed.

The affidavit required by section 192 of "The Bankruptcy Act, 1861," paragraph 5, may be in the following form:—

"The Bankruptcy Act, 1861.

Form of affidavit by debtor, &c. under sect. 192, act of 1861.

"I, A. B. [the debtor or some person able to depose thereto] make oath and say as follows, that the deed or instrument now produced and marked with the letter A, bearing date the — day of —, and made between [state the parties to the deed, not including the names of the creditors], being a deed [describe its nature], has been executed, or by writing, assented to or approved of, by a majority in number, representing three-fourths in value of the creditors of me [the debtor, when the debtor deposes, or of — (the debtor, where some other person deposes)], whose debts amount to ten pounds and upwards, and I [the debtor, where the debtor deposes] verily believe that the amount in value of my property, credits, estate and effects comprised in such deed is —, [and where another person deposes he must state that after due inquiry made, to the best of his knowledge, information and belief, the amount in value of the property, credits, estate and effects of — the said debtor, comprised in such deed is —]."

Form of Certificate by Trustee in the Court of Bankruptcy.

Certificate by trustee, sect. 192, par. 5, act of 1861.

The certificate required by section 192 of "The Bankruptcy Act, 1861," may be in the following form:—

"The Bankruptcy Act, 1861.

"I the undersigned [*if more than one trustee alter accordingly*], being a trustee under a deed or instrument bearing date the — day of —, and made between [*state the parties, not including the names of creditors*], being a deed [*describe the nature thereof*], do hereby certify that a majority in number, representing three-fourths in value of the creditors of the said C. D. [*debtor*], whose debts amount to ten pounds or upwards, have executed or in writing assented to or approved of such deed or instrument; and I also certify that after full inquiry made to the best of my knowledge, information and belief, the amount in value of the property, credits, estate and effects of the said C. D. [*debtor*] comprised in such deed is [—]."

Memorandum of registration to be endorsed on every deed, sect. 196, 24 & 25 Vict. c. 134, p. 1219.

The memorandum of registration required by "The Bankruptcy Act, 1861," to be written on the face of every deed or instrument on being registered shall be in the following form:—

"The Bankruptcy Act, 1861.

"This deed or instrument was brought into the office of the chief registrar of the court of bankruptcy for registration on the — day of — at the hour of — on that day, and was duly registered pursuant to the provisions of the 'The Bankruptcy Act, 1861.'

"Certificate of Registration of Deed and Protection to Debtor.

"The Bankruptcy Act, 1861.

Certificate of registration of deed, &c., sect. 198, 24 & 25 Vict. c. 134, p. 1220.

"I — being the chief registrar of her majesty's court of bankruptcy do certify that on the — day of — a certain deed or instrument bearing date the — day of — and made and executed by and between [*set forth parties, not including the names of the creditors*], being a deed or instrument [*set forth the nature and effect thereof*] was on the — day of —, and at the hour of — on such day brought into my office for registration, and was duly registered pursuant to the provisions of 'The Bankruptcy Act, 1861.' Given under my hand and seal of the court at the court of bankruptcy, London, the — day of —, 1861.

(Seal of
the court.)

A. B.

"Note.—This certificate is available to the said A. B. [*the debtor*] for all purposes as a protection in bankruptcy."

Registration of deed under sect. 187 or sect. 194, act of 1861.

20. If a deed be registered under section 187 or section 194 of "The Bankruptcy Act, 1861," the above forms may be observed, so far as may be applicable.

As to Prisoners for Debt.

As to prisoners for debt. See sects. 100 *et seq.*, act of 1861.

21. The gaoler of every gaol situate within the metropolitan and London districts shall transmit the return required of him by sections 100 and 104 to the chief registrar of the London court.

22. The gaoler of every gaol situate within a country district, *but not situate in the county within which a country commissioner of bankruptcy usually holds his court*, shall make the return required of him by sections 100 and 104 to that county court having jurisdiction in bankruptcy within the jurisdiction of which the gaol is situate, and shall transmit the same to the registrar of such court.

23. The gaoler of every gaol situate in the county within which a district commissioner of bankruptcy usually holds his court shall make the return required of him by sections 100 and 104 to such district court of bankruptcy, and transmit the same to the registrar of such court.

24. With respect to returns from gaolers of prisons within the metropolitan district, the chief registrar shall assign the same to the registrars of the London court in rotation, and they shall respectively attend the gaols the returns from which are so assigned to them respectively.

25. With respect to returns from gaolers of prisons within the London district (exclusive of the metropolitan district), the chief registrar shall assign such returns, and the duty of attending at the gaols therein mentioned to the registrars

of the several county courts of the districts within which such gaols are severally situate, and the registrars shall respectively attend at such gaols accordingly.

26. The return and order required by sections 100 and 101 of "The Bankruptcy Act, 1861," may respectively be in the form following:—

"Gaoler's Return.

"The Bankruptcy Act, 1861.

"Return made by —, gaoler of — gaol [or keeper or governor of — prison], in the county of —, this first day of —, 18— [or this second day of —, 18—, the first day of the month being a Sunday], in pursuance of the above act, of every person now within the walls, rules or liberties of the said gaol [or prison, in custody upon any process whatsoever for or by reason of any debt, claim or demand whatsoever, and not being within any of the exceptions mentioned in section 104 of 'The Bankruptcy Act, 1861.']

1. Name of person detained, and date of his imprisonment.
2. Name and address of every creditor at whose suit such prisoner is imprisoned or detained.
3. Nature and amount of debt or demand, or debts and demands, for which such prisoner is detained in custody.
4. Whether such prisoner is willing or refuses to petition the court of bankruptcy, or is unable to do so by reason of poverty.

A true return,
(Signed) — gaoler,
[or keeper or governor]."

"The Bankruptcy Act, 1861.

"In the Court of Bankruptcy for the — district [or in the County Court — for —].

(Sect. 101, act of 1861.)

— day the — day of —, 18—.

"I, A. B., a commissioner of —, in pursuance of the power conferred upon me by 'The Bankruptcy Act, 1861,' order that —, esquire, a registrar of the court of bankruptcy, [or —, gent., a registrar of the county court] do attend at — gaol [or prison] in the county of —, at — o'clock in the — noon, then and there to examine [here insert the name or names] returned to me by —, gaoler of the said gaol, [or keeper or governor of the said prison] as a prisoner [or prisoners] confined in the said gaol [or prison] for debt, and to proceed thereon and make order as the said act directs.

— Commissioner."

And a copy of such order shall be forthwith sent through the general post by the registrar therein named to the gaoler, and also to the execution and detaining creditors of every prisoner included in such return.

Notice of order.
(Sect. 101, act of 1861.)

27. On the day named in such order the registrar shall attend at the prison and examine every prisoner included in such return pursuant to the directions contained in section 101 of "The Bankruptcy Act, 1861," and if, upon the result of such examination, he shall think fit to make an order in pursuance of such section, such order may, *mutatis mutandis*, be in the following form:—

Registrar's order after examination, &c.

"The Bankruptcy Act, 1861.

"In the matter of —, late of —, in the county of —, and now a prisoner for debt in — gaol [or prison] Monday, the — day of —, 18—.

Registrar's order and certificate.
(Sect. 101, act of 1861.)

"Whereas in pursuance of an order of the court of bankruptcy for — [or of the county court for —], dated the — day of —, 18—, I, being a registrar of the said court, attended on the day first above mentioned at — gaol [or prison], and there examined A. B., of —, whose examination in writing is filed herewith, whereby it appears that the said A. B. being a trader had been in prison for debt [or as the case may be], at the suit of —, of —, for fourteen days [or, not being a trader had been in prison for debt [or as the case may be], at the suit of —, of —, for two calendar months, on the said — day of — [the day of the registrar's order], and that the last

place of his abode and place of business [or place of abode] within six months of his imprisonment [or within —] was —.

"And having evidence before me of the service of notice of the said order of the said court upon the gaoler of the said gaol [or keeper or governor of the said prison], and upon the execution [and detaining] creditor, I do adjudge the said *A. B.* a bankrupt, and do declare that the said *A. B.* — became and was bankrupt on the — day of — [the day of the debtor's commitment or detention]; and I do hereby grant the said *A. B.* protection from arrest from any claim, debt or demand now due or owing by the said *A. B.* And I do hereby order that the said *A. B.* be forthwith discharged from custody as aforesaid; and I do hereby direct that the said bankruptcy be prosecuted in the court of bankruptcy for the — district [or in the county court for —].

All which I certify.

(Signed)

—Registrar."

Registrar's certificate, to what court to be sent.

28. In addition to the certificate which the registrar is directed to make by the 101st section to the court of which he is registrar, he shall, if a registrar of a county court at the same time, send a copy of his certificate to the court of bankruptcy having jurisdiction in the district where the gaol is situate, and, if a registrar of the court of bankruptcy, he shall send a copy of such certificate to the county court having jurisdiction over the same district.

Meeting of creditors under bankruptcy of debtor on his own petition.

[Altered by G. O., 6th Nov. 1861, r. 1, post.

Advertisements. [For forms of advertisements, see G. O., 6th Nov. 1861.]

29. Where adjudication of bankruptcy is made against a debtor on his own petition or against a debtor in gaol without petition, the first meeting of creditors shall be holden on the 14th day after the day of such adjudication, unless such 14th day shall happen to be one of the days excepted by the 48th section, and in that case on the day after.

30. Advertisements of adjudication and of the first meeting of creditors shall, in cases of adjudication against debtors on their own petition, and of adjudication against debtors in prison without petition, be published within four days after such adjudication in the London Gazette, and in such provincial newspaper or other publication as the commissioner, judge or registrar shall direct.

Allotment of petitions in case of adjudication against prisoners.

Appointment of official assignee and solicitor.

[See G. O., 22nd Feb. 1862, 22nd May, 1862, 1st Dec. 1864.]

31. Bankruptcies of prisoner debtors upon adjudication made by registrars which are to be prosecuted in the court of bankruptcy, shall in the London district be allotted to the commissioners in rotation. Such allotment shall be made in London by the chief registrar or registrar acting for him. The commissioner upon each bankruptcy being allotted to him shall appoint an official assignee to act in such bankruptcy. After the first meeting of creditors, if no creditors' assignee be appointed, the lord chancellor shall appoint a solicitor to act in the prosecution of the bankruptcy.

As to Appeals.

Appeals.

32. All appeals to the court of appeal shall be brought on by motion, and no new evidence shall be received on any appeal unless the court of appeal shall on the hearing thereof so direct.

Office of accountant for dividends, &c. to be open throughout the year.

33. The office of the accountant in bankruptcy shall be open throughout the year for the payment of dividends and money orders, except on the days mentioned in the 48th section of the act.

As to Stamps.

Defacing stamps, sect. 42, act of 1861.

34. Every officer of the court of bankruptcy who shall receive any document to which a stamp shall be affixed, or upon which a stamp shall be impressed, shall immediately upon the receipt of such document deface the stamp thereon, by writing or impressing upon such stamp the words "court of bankruptcy;" and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid, and it shall be the duty of the party presenting such document to see that such defacement has been duly made.

As to Shorthand Writers.

Short-hand writer, sect. 61, act of 1861.

35. Whenever a shorthand writer shall be employed pursuant to section 61 of "The Bankruptcy Act, 1861," such shorthand writer shall if required within

(two) days after the taking of any examination, or the evidence of parties, deliver to the registrar a faithful and true transcript of such examination or evidence, and shall be paid in respect thereof a fee of one guinea for attendance, and 8d. per folio of every (90) words contained in such transcript, and such payment shall be made by the party on whose application the employment of a shorthand writer has been directed by the court, or, if the court thinks proper, out of the estate.

The shorthand writers shall be appointed by the commissioner or judge.

36. Until further order and in cases not otherwise provided by these orders the rules and orders in bankruptcy bearing date respectively the 19th October, 1852, the 3rd February, 1855, the 19th May, 1855, the 19th June, 1856, and the 24th March, 1857, shall, where applicable, and with such variations in the forms specified in the schedules thereof as may be necessary, be acted upon for the several purposes mentioned in the 45th section of "The Bankruptcy Act, 1861."

Until further order and in cases where applicable, the rules and orders of 19th October, 1852, &c. to be acted upon.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

M. D. HILL, Commissioner.

SCHEDULES REFERRED TO IN THE FOREGOING ORDERS.

SCHEDULE 1.

"The Bankruptcy Act, 1861."

Petition by a Creditor for Adjudication of Bankruptcy.

To the Court of Bankruptcy for the — District.

The humble petition of —,

Showeth,

That — having resided [*or carried on business, as the case may be*] for six [*or for the longest period, that is to say, — months during six*] calendar months next immediately preceding the date of this petition, within the district of this honorable court, that is to say, at [*insert the name of the place*], is indebted to your petitioner in the sum of — [*proceed as in the form now in use, i. e. act of 1849, sched. M.*].

[See indorsement in case of non-trader, General Order, 12th October, 1861, r. 2.—
—*Author's note.*]

SCHEDULE 2.

"The Bankruptcy Act, 1861."

Petition by a Debtor for Adjudication of Bankruptcy against himself.

To the Court of Bankruptcy for the — District.

The humble petition of —,

Showeth,

That your petitioner having resided [*or carried on business, as the case may be*] for six [*or for the longest period, that is to say, — months during six*] calendar months next immediately preceding the date of this petition, within the district of this honorable court, that is to say, at [*insert the name of the place*] is unable to meet his engagements with his creditors: [*If the petitioner be in prison, add, "and that your petitioner being a prisoner in [state the prison or gaol] has given notice in writing to the keeper of such gaol [or prison] of his intention to file this petition."*]

Your petitioner therefore humbly prays that adjudication of bankruptcy may be made against him. And your petitioner shall ever pray, &c.

Signed by the petitioner on the — of —, 18—, in the presence of —.

Solicitor in the matter of this petition.

For affidavit verifying statements in petition, see act of 1849, sched. N. This more properly refers to affidavit than to petition.

If the petitioner knows or verily believes that the debts justly due and proveable in bankruptcy against his estate amount in the whole to a sum not exceeding 300l., such fact should be stated on oath by the petitioner in his affidavit of the truth of the allegations in the peti-

tion thus, "And this deponent further saith, that he verily believes the debts justly due and proveable in bankruptcy against his estate amount in the whole to a sum not exceeding 300*l*."

If the petition be by partners alter the form accordingly, and state the names of the several petitioners in the attestation or attestations relating thereto respectively.

[In this case the signature must be by the partners individually, not by one or more only on behalf of themselves and the others, which is irregular (a).—*Author's note.*]

If the petition be in formá pauperis, the affidavit required by Sect. 98, 24 & 25 Vict. c. 134, should be annexed.

See p. 1204. See also C. C. O., 1861, sched. 17, post.

(a) *Re Oak*, 31 L. T. 43.

SCHEDULE 3.

"The Bankruptcy Act, 1861."

Affidavits for summoning a Judgment Debtor (b).

Sects. 76, 77, 78 and 90.—24 & 25 Vict. c. 134.

In the Court of Bankruptcy, London.

(Or, "In the Court of Bankruptcy for the — District, at —.")

I, *A. B.*, of —, make oath and say as follows:—

First, I say that *C. D.* is justly and truly indebted to me in the sum of £— upon and by virtue of a judgment of the court of — for the said sum of £— recovered by me against the said *C. D.* on the — (c) day of — last past, and of which said sum the sum of £—, exclusive of costs, is due to me, and the sum of £— for taxed costs is due to me, making together the said sum of £—.

Second, I say that I verily believe that I am entitled to sue out against the said *C. D.* a writ of *capias ad satisfaciendum*, or to charge him in execution in respect of the said debt.

Third (d), I say that I have known the said *C. D.* for the space of — now last past, during which time the said *C. D.* did use and exercise the said trade of [*here insert the particular trade*], and sought to get his livelihood thereby, as others of the same trade usually do.

Fourth (e), I say that the said *C. D.* usually lives [*or, "as I am informed and believe, now is,"*] within the district of this honorable court, that is to say, at —, [*or "as I am informed and believe, is not in England," but I say that the usual or last known place of abode of the said C. D. in England was at —.*]

Sworn at, &c.

(b) See pp. 1201 and 1203.

(c) The day of signing final judgment, which must be after the passing of "The Bankruptcy Act, 1861."

(d) If the summons be not applied for until after the expiration of one calendar month from the signing of judgment, this paragraph may be omitted.

(e) If the residence or the trading be sworn to by some other person, alter the affidavit accordingly.

The following Form to be used in Cases of Disobedience to Decree in Equity or Order in Bankruptcy, Insolvency or Lunacy.

In the Court of Bankruptcy, London.

(Or, "In the Court of Bankruptcy for the — District, at —.")

We, *A. B.*, of —, and *C. D.*, of —, severally make oath and say:—

First, I, *A. B.* for myself say that *E. F.* is justly and truly indebted to me in the sum of £— upon and by virtue of a decree of the high court of chancery [*or "an order of the lord high chancellor," or "of the right honorable the master of the rolls," or of "his honor the vice-chancellor"* —, &c., &c., bearing date the — day of —, and made in a certain suit then pending, wherein I the said *A. B.* was plaintiff and the said *E. F.* defendant [*or in a certain matter in bankruptcy, insolvency or lunacy,*] whereby the said *E. F.* was decreed [*or "ordered"*] to pay to me the sum of £—, exclusive of costs, and the sum of £— for taxed costs [*give the substance of the decree or order*], making together the said sum of £—, and upon which a peremptory

order made by the said lord chancellor, [or, &c.] was obtained by me on the — day of —, directing, &c. as in the peremptory order. [Paragraphs as to the trading and residence deposed to by the creditor or some other person, here follow. If the summons be not applied for until after the expiration of two calendar months after service on the debtor of the peremptory order, or, such order having been duly served after the expiration of seven days after the day fixed by the peremptory order for payment (which shall last happen), the paragraph as to the trading may be omitted.—See sect. 77.] (p. 1201.)

Second, I, C. D., for myself say that I did on the — day of — duly serve the said E. F. with a true copy of the said decree [or “order,”] by delivering to or leaving the same with the solicitor [or “a clerk of the solicitor,” of the said E. F. at his office at —.

Third, I, C. D., further say that I did on the — day of — personally serve the said E. F. with a true copy of the said peremptory order.

Fourth, I, A. B., further say that the said E. F. has not paid, or secured, or tendered, or compounded for the said debt, but the said debt still remains wholly due and unpaid.

Sworn by —, at—.

SCHEDULE 4.

“The Bankruptcy Act, 1861.”

Summons of Judgment Debtor, sect. 76, &c., 24 & 25 Vict. c. 134 (a).

These are to will and require you to whom this summons is directed personally to be and appear before the commissioner in attendance in chambers at the court of bankruptcy in Basinghall-street, in the city of London [or at the court of bankruptcy for the — district at — in the county of —] on the — day of —, at — o'clock, to be examined respecting your ability to satisfy a debt of £— claimed of you by A. B. of — (b) upon and by virtue of a judgment of the court of — for the said sum of £— recovered by the said A. B. against you on the — day of — last, and of which said sum the sum of (c) £—, exclusive of costs, is sworn to be due from you to the said A. B., and the sum of £— for taxed costs, making together the said sum of £—. You are to be examined also for the discovery of property applicable to satisfy the said debt. You are moreover to observe the (d) notice endorsed hereon, and hereof you are not to fail at your peril.

Given under my hand and the seal of the court, the — day of —, in the year of our Lord —.

(Signed)

— Registrar.

To E. F. of —.

(Seal of the
court.)

(a) See p. 1201.

(b) If upon a decree in equity, &c., say “upon and by virtue of a decree” (or “order”) and peremptory order, dated respectively the — day of — and the — day of —, and sworn to have been duly served upon you, whereby you were directed to pay to the said A. B. the sum of £— exclusive of costs; and the sum of £— for taxed costs, making together the said sum of £—.

(c) The debt, exclusive of costs, must not be under 50*l*.

(d) See Order 7 (p. 1290).

SCHEDULE 5.

“The Bankruptcy Act, 1861.”

Form of the Statement to be filed in Court by every Debtor petitioning for Adjudication of Bankruptcy against himself, and to be verified by the oath of the Petitioner under sect. 93, 24 & 25 Vict. c. 134 (e).

N.B.—This is to be a full, true and accurate statement, verified by the oath of the petitioner, of his debts and liabilities of every kind, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements, reckoning as debts—

1. Sums due to creditors holding mortgages or other available securities or liens,

(e) See p. 1203.

after deducting the value of the property comprised in such mortgages, securities or liens.

2. Such interests and costs as shall be due in respect of any of the debts.

But not reckoning—

1. The amount of the debts in respect of which the petitioner has already taken the benefit of insolvency, protection or bankruptcy.

2. Debts barred by any statute of limitations.

The statement must be filed and verified within three days after filing the petition for adjudication, and in default thereof the petition will be dismissed.

A full, true and accurate statement, verified by the oath of the petitioner, of the debts and liabilities of every kind, reckoned in manner above directed, of a debtor petitioning for adjudication of bankruptcy against himself, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements.

Creditors.		Amount of debts, after deducting the value of property comprised in mortgages, securities, or liens.	Debts secured by mortgages or other available securities or liens, showing the amount secured, and the value or estimated value of the property comprised therein.	Causes of the petitioner's inability to meet his engagements.
Names.	Residences.			

To be signed by the petitioner.

SCHEDULE 6.

“The Bankruptcy Act, 1861.”

Affidavit of Truth of Statement to be filed under Section 93 (a).

— day of — A.D. —.

E. F., of —, in the — of —, the petitioner named in the statement hereunto annexed, maketh oath and saith, that the said statement contains a full, true and accurate account of his debts and liabilities of every kind, reckoned as required by “The Bankruptcy Act, 1861,” and the General Orders in Bankruptcy, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements.

Sworn at &c.

Before me —.

(a) See p. 1203.

SCHEDULE 7.

“The Bankruptcy Act, 1861.”

Declaration of Insolvency by Debtor, sect. 72, 24 & 25 Vict. c. 134 (b).

I, the undersigned *E. F.*, of —, do hereby declare that I am unable to meet my engagements with my creditors.

Dated at the hour of — [in the forenoon, or at noon, or in the afternoon, as the case may be], this — day of —, in the year of our Lord —.

(Signed) *E. F.*

Witness,

G. H., Registrar of the Court of Bankruptcy,
[or attorney or solicitor of the court of —].

(b) See p. 1200.

SCHEDULE 8.

“The Bankruptcy Act, 1861.”

Order for substituted Service of Judgment Debtor Summons when the Debtor is in England, but cannot be found.—24 & 25 Vict. c. 134, s. 79 (a).

In the Court of Bankruptcy, London.

[Or “for the — district at —.”]

Ex parte —.

In the matter of —.

— day of —, 186—.

Upon the application of — [of counsel or solicitor] for —, and upon proof to the satisfaction of the court that *E. F.*, the debtor named in the summons hereunto annexed, is in England, but is not to be found, it is hereby ordered by the court that service of the said summons, &c. [stating the mode] shall be good service.

By the court,

— Registrar.

(a) See p. 1201.

SCHEDULE 9.

“The Bankruptcy Act, 1861.”

Order for Mode of Service of Judgment Debtor Summons, where the Debtor is not in England.—24 & 25 Vict. c. 134, s. 79 (b).

In the Court of Bankruptcy, London.

[Or “for the — district at —.”]

Ex parte —.

In the matter of —.

— day of —, 186—.

Upon the application of — [of counsel or solicitor] for —, and upon proof to the satisfaction of the court that *E. F.*, the debtor named in the summons hereunto annexed, is not in England, and that service in the manner and form hereinafter mentioned will be effectual to give notice to the said *E. F.*, it is hereby ordered by the court that service of the said summons shall be made by, &c. [stating the mode]: And it is hereby further ordered, that (c) the time and place at which the said *E. F.* is required to appear by the said summons, shall be the time and place for the appearance of the said *E. F.* under this order, and such time and place is hereby appointed accordingly.

By the court,

— Registrar.

(b) See p. 1201.

(c) If any other time be appointed, alter form accordingly.

SCHEDULE 10.

“The Bankruptcy Act, 1861.”

Order for Notice of Judgment Debtor Summons in Gazette and Newspapers, where service of the Summons cannot be effected.—24 & 25 Vict. c. 134, s. 81 (d).

In the Court of Bankruptcy, London.

[Or “for the — district at —.”]

Ex parte —.

In the matter of —.

— day of —, 186—.

Upon the application of — [of counsel or solicitor] for —, and upon proof to the satisfaction of the court, that *E. F.*, the debtor named in the summons hereunto annexed, is keeping out of the way to avoid service thereof, and that service of the said summons cannot be effected, it is hereby ordered that a notice be inserted [stating the number of times] in the London Gazette, and in [stating the newspapers], requiring the said *E. F.* personally to be and appear before [&c. as in the summons] on the (e)

(d) See p. 1201.

(e) This must be a day not less than fourteen days after publication of the first notice.

day of — at — o'clock, to be examined respecting his ability to satisfy a debt of [*&c. as in the summons*], and for the discovery of property applicable in that behalf: And it is further ordered, that by such advertisement the said *E. F.* be informed, that if after service of the said summons, or due notice thereof by the said advertisement, he does not pay the said debt and costs, or secure or compound for the same to the satisfaction of the creditor, then on his appearance to the said notice in the said Gazette and newspapers, or, if he shall not appear, having no lawful impediment allowed by the court, and in either case without the presentation of a petition for adjudication or other proceeding, the court may adjudge the said *E. F.* bankrupt.

By the court,

— Registrar.

SCHEDULE 11.

“The Bankruptcy Act, 1861.”

Advertisement of Notice in London Gazette, &c., where service of Judgment Debtor Summons cannot be effected (a).

In Bankruptcy:—Statutory Notice of Judgment Debtor Summons.
To *E. F.* of —.

Take notice, that a judgment debtor summons, dated the — day of —, was issued by — of —, attorney for the plaintiff [*or plaintiffs*] hereinafter named [*or by the plaintiff or plaintiffs hereinafter named*, who resides at — [*&c. as indorsed on the summons*], and is under seal of her majesty's court of bankruptcy in London [*or her majesty's court of bankruptcy for the — district*], requiring you personally to be and appear before [*&c.*] on the — day of — at — o'clock, to be examined respecting your ability to satisfy a debt of [*&c. as in the summons*], and for the discovery of property applicable in that behalf. And whereas it has been proved to the satisfaction of the said court of bankruptcy, that you have been keeping out of the way to avoid service of the said summons, and that service thereof cannot be effected: This notice is given by order of the same court, and in pursuance of “The Bankruptcy Act, 1861,” and you are hereby required personally to be and appear before the commissioner in attendance in chambers at the same court at —, on the — day of — at — o'clock, to be examined respecting your ability to satisfy the said debt and for the discovery of property applicable in that behalf; and you are hereby informed that if, after service of the said summons or notice thereof by this advertisement, you do not pay the said debt and costs, or secure or compound for the same to the satisfaction of the creditor, then, on your appearance to this notice, or, if you shall not appear, having no lawful impediment allowed by the court, and in either case without the presentation of a petition for adjudication, or other proceeding, the court may adjudge you bankrupt.

— Registrar.

— Solicitor for the said *A. B.*

(a) See p. 1201.

SCHEDULE 12.

“The Bankruptcy Act, 1861.”

Adjudication of Bankruptcy on Proceeding under Judgment Debtor Summons (b).

In the Court of Bankruptcy, London.

[*Or “for the — district at —.”*]
— day of —, 186—.

I, —, a commissioner [*or registrar*] of the said court, upon good proof upon oath before me this day had and taken, do find that the said — is liable to be adjudged bankrupt under the 83rd section of “The Bankruptcy Act, 1861,” and I do therefore adjudge him bankrupt accordingly.

A. B., Commissioner [*or Registrar*].

(b) See sect. 83, p. 1202.

SCHEDULE 13.

"The Bankruptcy Act, 1861."

Order annulling or making absolute Adjudication of Bankruptcy made under the 83rd Section(a).

In the Court of Bankruptcy, London.

[Or "for the — district at —."]

In the matter of —.

— day of —, 186—.

Upon reading the proceedings in the above matter, and upon hearing [the evidence now adduced, *if the case be so*, and] what was alleged by —, and being satisfied that sufficient [or no sufficient] cause has been shown for annulling the adjudication of bankruptcy made against the said — on the — day of —, I do order that such adjudication be annulled [or be confirmed], and the same is hereby annulled [or confirmed and made absolute] accordingly.

A. B., Commissioner.

(a) See sect. 84, p. 1202.

SCHEDULE 14.

"The Bankruptcy Act, 1861."

Declaration to be made when Petition for Adjudication of Bankruptcy or a Judgment Debtor Summons is filed or sued out by Public Officer or Agent of Copartnership, under Section 92.—24 & 25 Vict. c. 134(b).

In the Court of Bankruptcy, London.

[Or "for the — district at —."]

In the matter of —.

— day of — A.D. 186—.

I, the undersigned —, do solemnly declare that I am a public officer [or agent] of [name of copartnership] duly authorized to sue and be sued in the name of a public officer or agent of such copartnership, and that I am authorized to sue as the nominal petitioner for and on behalf of such copartnership.

Signed —.

Declared before, &c. [See sect. 207, Act 1861, p. 1221.]

(b) See p. 1203.

SCHEDULE 15.

"The Bankruptcy Act, 1861."

Declaration of Proof of Debt by Creditor under Section 144.—24 & 25 Vict. c. 134(c).

In the Court of Bankruptcy, London.

[Or "In the Court of Bankruptcy for the — district at —."]

In the matter of —, bankrupt.

I, A. B., of —, do solemnly declare that the statement of the debt [and of the account, *if any*] between me and the said bankrupt, hereunto annexed, is a full, true and complete (d) statement of account between me and the said bankrupt, and that the debt thereby appearing to be due from the estate of the said bankrupt to me was on or before the — day of — [the date of the bankruptcy] and still is justly due.

Signed, A. B., the creditor above named.

Declared before me at — this

— day of —, 186—.

(c) See p. 1211.

(d) Any bills, notes or other securities held in respect of the debt must be set forth in the statement of account, and if there be any set-off, the balance only should be claimed.

Declaration for Proof of Debt by Agent of Company incorporated, or authorized to sue and bring Actions, under Section 144.—24 & 25 Vict. c. 134 (a).

In the Court of Bankruptcy, London.

[Or “In the Court of Bankruptcy for the — district at —.”]

In the matter of —, bankrupt.

I, *A. B.*, of —, agent of —, being a public company incorporated [or authorized to sue and bring actions] and carrying on business at —, do solemnly declare that I am such agent, and duly authorized to make this proof, and that the statement of the debt [and of the account, *if any*,] between the said company and the said bankrupt, hereunto annexed, is a full, true and complete (*b*) statement of account between the said company and the said bankrupt, and that it is within my own knowledge that the debt thereby appearing to be due from the estate of the said bankrupt to the said company was incurred on or before the — day of — [the date of the bankruptcy] and for the consideration therein stated, and that to the best of my knowledge and belief the said debt still remains unpaid and unsatisfied.

Signed, *A. B.*,

Agent of the company above named.

Declared before me at —, this
— day of —, 186—.

[The declarations may be made before any court or person authorized to take affidavits, &c. in bankruptcy, under sect. 207.]

(*a*) See p. 1211.

*(*b*) Any bills, notes or other securities held in respect of the debt must be set forth in the statement of account, and if there be any set-off, the balance only should be claimed.

SCHEDULE 16.

“The Bankruptcy Act, 1861.”

Statement of Accounts to be filed by the Bankrupt Ten Days at least before the Day appointed for the last Examination or Adjournment thereof, under sect. 141, 24 & 25 Vict. c. 134. [When ordered by the court, a goods account and a cash account for such period as the court shall think fit, and an account accounting for any deficiency, shall be added by the bankrupt, within the time appointed, to his statement of accounts, and shall form part thereof] (c).

In the Court of Bankruptcy, London [or “for the — district”].

In the matter of — a bankrupt.

Filed the — day of — 18—.

Dated the — day of — 18—.

DR.			Statement of Accounts.			CR.		
Folio		£ s. d.	Folio		£ s. d.			
1	To creditors (un-secured)		6 and 7.	By debtors—				
				Good				
2	To creditors holding security ..			Doubtful				
				Bad				
3	To liabilities on bills discounted		8 & 9	By property given up to my assignees				
4	To ditto on accommodation bills .		2	By property in the hands of creditors				
5	To creditors to be paid in full....							
	Surplus (if any) ..			Deficiency				
		£				£		

MEMORANDUM.—The amount of my expenditure for the support of myself and family, &c. for the year next immediately preceding my bankruptcy was about —; ditto for the previous year —.

(*c*) See p. 1211.

CREDITORS UNSECURED.

N.B.—When the name and residence (or either of them) of any indorser or holder of any bill or note, &c. are unknown, the fact must be stated. Where there are cross demands, the party must be entered as a debtor or creditor for the balance only (as the case may be), and showing the amount of set-off.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.	When contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c.
			£ s. d.		

CREDITORS HOLDING SECURITY.

Particulars of securities held, with dates of same and when given, to be stated under the names of the several creditors.

Reference to ledger or voucher.	Names of creditors.	Residences and description.	Value of securities.	Amount of debts.
			£ s. d.	£ s. d.

LIABILITIES ON BILLS DISCOUNTED,

Which ought to be paid by the Acceptors.

The dates of the bills and when due, with the names, addresses and trade or occupation of the acceptors thereof, are to be set forth under the names of the holders.

	Names of holders, as far as known.	Addresses.		Amount.
			£ s. d.	£ s. d.

(See p. 1211.)

ACCOMMODATION BILLS.

The dates of the bills, and when due, with the names, addresses, and trade or occupation of the drawers and acceptors thereof are to be set forth under the names of the holders ; if the bankrupt be liable as drawer, acceptor or indorser thereof, it is to be stated accordingly.

	Names of holders.	Addresses and particulars of bills.		Amount.
			£ s. d.	£ s. d.

CREDITORS TO BE PAID IN FULL.

	Names of creditors.	Residences and occupations.	Amount.	When contracted.	Nature and consideration of the debt.
			£ s. d.		

DEBTORS UNDER £10.

Where there are cross demands, the party must be entered as a debtor or creditor for the balance only (*as the case may be*), and showing the amount of set-off.

Reference to ledger or voucher.	Names, descriptions, and residences of persons from whom debts are due or claimed.	When contracted.	Amount.			Nature and consideration of the debt, also securities (if any) for the same, and the estimated value of such securities.
			Good.	Doubtful.	Bad.	
			£ s. d.	£ s. d.	£ s. d.	

(See p. 1211.)

DEBTORS EXCEEDING £10.

Where there are cross demands, the party must be entered as a debtor or creditor for the balance only (*as the case may be*), and showing the amount of set-off.

Reference to ledger or voucher.	Names, descriptions, and residences of persons from whom debts are due or claimed.	When contracted.	Amount.			Nature and consideration of the debt, also securities (if any) for the same, and the estimated value of such securities.
			Good.	Doubtful.	Bad.	
			£ s. d.	£ s. d.	£ s. d.	

PROPERTY IN POSSESSION.

Real and personal estate and effects, which were, at or since the date of the petition or adjudication of bankruptcy against me, or are now in my possession, enjoyment or control, or which were or are held by any other person or persons in trust for my use, or to the possession or enjoyment of which I was entitled at the date of the said petition or adjudication, or am now entitled.

1.		£ s. d.
Interest in lands.	Freehold, copyhold and leasehold property, with local description, names of tenants, and annual rent of the same, and statement of incumbrances (if any) thereupon, with the dates thereof	
2.		
Personal property.	Cash, bills of exchange, promissory notes or securities of any description	
	Stock-in-trade in my business of at estimated value	
	(If sold, state amount realized.)	
	Machinery, fixtures and utensils in my business, ditto ditto	
	Household goods and furniture, at	
	Jewels, trinkets and ornaments of the person	
	Plate, linen and china	
	Wines and other liquors	
	Books, prints and pictures	
	Horses, cows and other animals	
	Carriages	
	Farming stock and implements of husbandry	
	Ships and shares of ships, viz.:	
	Goods or personal property of any other description	
	(If any of the above are at any other place than the premises of the bankrupt, viz., any public or private warehouse, railway station, dock, wharf, or any other place, state it accordingly.)	

(See p. 1211.)

PROPERTY IN POSSESSION—*continued.*

		£ s. d.
3. Property in the funds, annuities, shares, &c.	Annuities, money in public or other funds, shares in canal or other companies; showing in whose names the same are standing, also when and by whom the last dividend or other payment was received in respect of the same ..	
4. Unpaid legacies.	Legacies due, but unpaid, with all particulars concerning the same	
5. Policies of insurance.	Policies of insurance, either on my own life or that of any other person or persons, in which I have any interest .. Fire policies	
BOOKS, DEEDS, PAPERS.	The following is a true list of all books, papers, deeds and writings relating to my trade, dealings, estate and effects, or any part thereof, which at the date of the petition or adjudication of bankruptcy against me were, or at any time since have been, in my possession or under my custody or control, or in the possession or custody of any person in trust for me or for my use, benefit or advantage.	

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, PLACES, PENSIONS, RIGHTS AND POWERS.

N.B.—*Contingent as well as vested interests must be entered.*

Real and personal estate and effects in which I had or have any interest in reversion, remainder or expectancy.

		Supposed value of my interest if now to be sold. £ s. d.
1. Interest in land.	Freehold, copyhold and leasehold property, with names and descriptions of persons now enjoying the same, and the annual value thereof; also the nature of my interest therein, and from whom, and in what manner it is derived ..	
2. Personal property.	Personal property, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom and in what manner it is derived..	
3. Property in the funds, annuities, shares, &c.	Annuities, money in public or other funds, shares in canal and other companies; showing in whose names the same are standing, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom and in what manner it is derived ..	
Places and pensions in possession or reversion.	Places of benefit or advantage held by me, with the salaries, fees, and emoluments thereof; also all pensions and allowances in possession or reversion held by me, or by any other person or persons for me, or on my behalf, or of and from which I may derive any benefit or advantage ..	
Rights and powers.	Rights and powers which I or any other person or persons in trust for me or for my benefit have any power to dispose of, charge or exercise	

(See p. 1211.)

SCHEDULE 17.

“The Bankruptcy Act, 1861.”

Order of Discharge when granted at the same Sitting of the Court at which the Bankrupt has passed his last Examination, sect. 140.—24 & 25 Vict. c. 134, and see sects. 157, 170, 172 (a).

In the matter of — of —, adjudged bankrupt on — the — day of —, A.D. —.

Whereas at a public sitting of the court held on the — (b) day of — at the court of bankruptcy, London [or at the court of bankruptcy for the — district at —] for the said bankrupt to pass his last examination, and also to make application for his order of discharge under “The Bankruptcy Act, 1861,” (whereof and of the purport whereof the notice required in that behalf was duly given) the said bankrupt passed his last examination, and upon application then and there made by the said bankrupt for such discharge, and upon hearing, &c., &c., it was adjudged by the court that the said bankrupt was entitled to such discharge, whereupon such order of discharge was and is hereby allowed and granted accordingly, [or, if the discharge were suspended, then, after the words “such discharge” proceed as follows] after suspension thereof for the period of —, the reasons for such suspension being, that it appeared to the court that, &c. [stating the reasons]: And whereas the period of suspension has now elapsed, the court allows the discharge, and such order of discharge is hereby allowed and granted accordingly (c).

Given under my hand and the seal of the court at the court of bankruptcy, London, [or at the court of bankruptcy for the — district, at —, in the county of —,] on the — day of —, in the year of our Lord 186—.

— Commissioner.

(Seal of the
court.)

— Registrar.

(a) See pp. 1210, 1213, 1215.

(b) If adjourned add “and by adjournment on the — day of —.”

(c) “If the order of discharge be wholly refused or be granted subject to any condition, or any sentence of imprisonment has been awarded, alter and state the facts accordingly.” See sects. 157, 159, Act of 1861.

SCHEDULE 18.

“The Bankruptcy Act, 1861.”

Order of Discharge, when granted at a Sitting of the Court appointed after the Bankrupt has passed his last Examination, sect. 158.—24 & 25 Vict. c. 134 (d).

In the matter of — of —, adjudged bankrupt on — the — day of —, A.D. —.

Whereas at a public sitting of the court appointed after the bankrupt passed his last examination and held on the — (e) day of —, at the court of bankruptcy, London [or at the court of bankruptcy for the — district at —] for the purpose of considering the question of granting to the bankrupt his order of discharge under “The Bankruptcy Act, 1861” (whereof and of the purport whereof the notice required in that behalf was duly given), and, upon hearing, &c., &c. [proceed as in the form of order of discharge when granted at the same sitting at which the bankrupt passed his last examination.]

(d) See p. 1213.)

(e) If adjourned add “and by adjournment on the — day of —.”

SCHEDULE 19.

“The Bankruptcy Act, 1861.”

Form of Letter of Attorney.

In the matter of — of —, a bankrupt.

Sir,

I [or we] hereby authorize you to attend the meeting of creditors in this matter advertised or directed to be holden at — on —, or any adjournment thereof, and [See also additional forms, 47.]

then and there for me [*or us*] and in my [*or our*] name to vote for or against [*here state the resolution or object of the meeting*], and in the choice of assignee or assignees of the estate of the bankrupt.

Witness to the signature

of —

To —

A. B.,

or A. B. for self and partners.

[See sect. 229, p. 1226, also ante, rule 10, p. 1291.]

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

M. D. HILL, Commissioner.

GENERAL ORDER.

14th October, 1861.

It is ordered as follows, that is to say,—

[See act of 1861,
sched. B.]

A fee of 1*l.* shall be paid on every petition for adjudication of bankruptcy when presented to the London court of bankruptcy or to a county court by debtors who are not traders, and whose debts do not exceed 300*l.*, and who do not petition *in formâ pauperis*.

The above fee to be received and taken by means of a stamp having the word "bankruptcy" impressed or affixed thereon, as provided by the act.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDER, COUNTY COURT.

23rd October, 1861.

I, the right honourable Richard, Baron Westbury, lord high chancellor of Great Britain, do hereby in pursuance of the powers vested in me by the 52nd section of "The Bankruptcy Act, 1861," authorize until further order the registrar of every county court, not being a metropolitan county court, when and so soon as the judge of such county court shall have duly taken the oath prescribed by the 7th section of the said act, to exercise all and singular the powers given by the said act to the registrars of the court of bankruptcy.

WESTBURY, C.

See p. 1197. This of course means that the registrars of the county courts are, for the purpose of bankruptcies properly within the jurisdiction of the courts to which they belong respectively, to have the powers that the registrars of the London and district courts have as to the bankruptcies within the jurisdiction of those last-named courts respectively, but does not extend the jurisdiction of the county courts themselves, so as to give a registrar of a county court power to adjudicate a man bankrupt, who might properly be so adjudicated by the registrar of a district court, *e. g.* if the debts due exceed 300*l.*

GENERAL ORDERS.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

6th November, 1861.

Whereas by the General Order, No. 29, of the General Orders bearing date the 12th October, 1861, it is ordered, that where adjudication of bankruptcy is made against a debtor on his own petition, or against a debtor in gaol without petition, the first meeting of creditors shall be holden on the 14th day after the day of such adjudication, unless such 14th day shall happen to be one of the days excepted by the 48th section, and in that case on the day after; but it is apprehended that the directions given by the said order cannot be, in all cases, conveniently observed; now it is hereby ordered that the said general order be and the same is hereby rescinded, and in lieu thereof it is ordered as follows:—

1. Where adjudication of bankruptcy is made against a debtor on his own petition, or against a debtor in gaol without petition, the first meeting of creditors shall be holden on the 14th day after the day of such adjudication, or on such other day as the court or the registrar making such adjudication shall think fit to appoint.

See General Order, 1861, rule 29, p. 1296. See also p. 1206.

2. The following shall be the sums paid for the insertion of advertisements in the London Gazette, namely,— [See sect. 202, act of 1861.]

For every advertisement of adjudication, meeting, sitting or other proceeding in any bankruptcy, except as hereinafter mentioned, the sum of three shillings.

Where two or more bankruptcies are included in one advertisement, the sum of two shillings for each bankruptcy.

Where the adjudication of bankruptcy is made on the application of the debtor himself petitioning *in formâ pauperis*, or by a registrar, against a debtor in prison, the sum of one shilling for each bankruptcy.

3. Several notices may be included in one advertisement, which shall also contain notices of such meetings or sittings as the court or registrar may think fit, and may be in the following forms:—

“The Bankruptcy Act, 1861.”

Notice of Adjudications and First Meetings of Creditors.

(1.) James Smith and Thomas Jones, of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy filed in her majesty's court of bankruptcy in London, on the — day of —, are hereby required to surrender themselves to —, a registrar of the said court, at the first meeting of creditors to be held before the said registrar, on the — day of —, at — o'clock in the — noon precisely, at the said court [or at —].

A. B., of —, is the official assignee, and C. D., of —, the solicitor acting in the bankruptcy.

(2.) Charles Green, of —, having been adjudged bankrupt under a judgment debtor summons sued out of her majesty's court of bankruptcy for the Birmingham district, on the — day of —, is hereby required to surrender himself to —, a registrar of the said court, at the first meeting of creditors to be held before the said registrar on the — day of —, at — o'clock in the — noon precisely, at the said court [or at —].

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

(3.) John Brown, of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy *in formâ pauperis* filed in the county court of —, holden at —, on the — day of —, is hereby required to surrender himself to —, a registrar of the said court, at the first meeting of creditors to be held before the said registrar, on the — day of —, at — o'clock in the — noon precisely, at the said court.

A. B., of —, is the official assignee, and C. D., of —, the solicitor in the bankruptcy.

(4.) William Dean, of —, having been adjudged bankrupt by a registrar of the court of bankruptcy [*or as the case may be*] attending at the — gaol, on the — day of —, and the adjudication being directed to be prosecuted at [*state the court*], is hereby required to surrender himself to —, a registrar of the said last-mentioned court, at the first meeting of creditors to be held before the said registrar on the — day of —, at — o'clock in the — noon precisely, at —.

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

Public sittings will be appointed by the court for the said bankrupts respectively to pass their last examinations, of which sittings due notice will be given in the London Gazette. At the said first meetings of creditors the registrar will receive the proofs of the debts of the creditors, and the creditors may choose an assignee or assignees of the bankrupt's estate and effects. At the public sittings proofs of debts of creditors will also be received, and the said bankrupts will be respectively required to submit themselves to be examined, and to make a full disclosure and discovery of all their estate and effects, and to finish their examinations.

Notice is also hereby given to all persons indebted to any of the said bankrupts, or that have any of their effects, not to deliver the same but to the official assignee, whom the court has appointed on that behalf, and give notice to the solicitor acting in the bankruptcy.

— Registrar.

"The Bankruptcy Act, 1861."

Notice of Sittings for Last Examination.

James Smith, of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy, filed in her majesty's court of bankruptcy in London, on the — day of —, 1861 [*or under, &c. as the case may be*], a public sitting for the said bankrupt to pass his last examination, and make application for his discharge, will be held before —, esquire, a commissioner of the said court, on the — day of —, 186—, at the said court at Basinghall-street, in the city of London, at — o'clock in the — noon precisely, the day last aforesaid being the day limited for the said bankrupt to surrender.

A. B., of —, is the official assignee, and C. D., of —, is the solicitor in the bankruptcy.

Charles Green, of &c.

John Brown, of &c.

The first meeting of creditors has been duly held in each of the said bankruptcies, and at the several public sittings above mentioned proofs of debts of creditors who have not proved will be received; and the said several bankrupts will be required respectively to surrender themselves to the said court, and to submit themselves to be examined, and to make a full disclosure and discovery of all their estate and effects, and to finish their examinations.

[See sect. 99, act of 1861.]

4. The fee to be allowed to the gaoler for bringing up any prisoner petitioning *in formâ pauperis* shall be the sum of three shillings.

[See sect. 99. See also C. C. O., 1st July, 1863, r. 74.]

5. The fee to the gaoler and also the sum paid for advertisements under bankruptcies of pauper prisoners shall be paid out of the funds standing to the account of the chief registrar, and shall be repaid out of the assets, if any, to be received from the estate of such bankrupts respectively.

WESTBURY, C.

JOHN S. M. FONBLANQUE.

EDWARD HOLROYD.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

19th November, 1861.

It is ordered as follows, that is to say,—

1. That from and after the date hereof the bills of costs of solicitors, the fees of messengers and high bailiffs, and the charges, fees and disbursements of auctioneers, brokers and accountants with respect to any proceedings in matters of bankruptcy under any petition for adjudication of bankruptcy presented by, or any adjudication of bankruptcy made against, a debtor whose debts do not exceed 300*l.* and under, every petition *in formâ pauperis*, in the event of there being assets of the bankrupt's estate applicable to the payment of costs, shall, with the exception of bills of costs on appeals, be taxed, settled and allowed in the courts of bankruptcy and in the several county courts acting in bankruptcy, according to the schedule hereunder set forth.

2. That after the same date the bills of costs of solicitors, and the fees of high bailiffs, and the charges, fees and disbursements of auctioneers, brokers and accountants in respect of matters of bankruptcy other than those provided for in the preceding order, transferred to a county court, either by the court of bankruptcy in London or by a resolution of the creditors of a bankrupt, and in respect of all appeals from the decision or order of a judge of a county court, shall be taxed, settled and allowed on the scale annexed to the General Order in bankruptcy, dated the 19th May, 1855.

3. The said fees of high bailiffs shall and may until further order be received and retained by every high bailiff as a remuneration in respect of his services in the discharge of his duties as a messenger, pursuant to section 11 of “The Bankruptcy Act, 1861.”

4. Every high bailiff shall keep an account of the fees so received by him, and of the expenses incurred by him in the discharge of his said duties, and shall on the 13th of October, 1862, and each succeeding 13th of October, render an account of the said fees and expenses for the preceding year to the chief registrar of the court of bankruptcy, and shall distinguish in such accounts the costs of which he claims the repayment under the 12th and 13th of the General Orders, dated the 12th October, 1861, for regulating the practice of the county courts (a), and under the 5th of the General Orders, dated the 6th day of November, 1861, and shall verify such account upon oath.

(a) Rescinded, County Court Order, 1st July, 1863.

SCHEDULE ABOVE REFERRED TO.

Solicitors' Costs.

	£	s.	d.
Attending and taking instructions for petition	0	6	8
Notice in writing to keeper of the prison or gaol of intention to petition when petitioner is in custody	0	3	4
Drawing and ingrossing petition, including parchment or paper	0	3	4
Paid stamp	0	8	4
Attending reading over and attesting signature	0	3	4
Drawing affidavit of verification and attending to be sworn	0	3	4
Paid oath, when any fee is paid, but whenever practicable the oath should be taken before a registrar	0	6	8
Attending to file petition and ascertain name of the commissioner, and attending upon adjudication	0	3	4
Attending official assignee with or instructing him as to the books and property of bankrupt, if any	0	3	4
The same to the messenger	0	5	0
Instructions for statements under section 93	0	0	8
Drawing the same, per folio	0	0	4
Ingrossing, per folio	0	3	4
Drawing affidavit and attending to be sworn	0	3	4
Paid oath	0	3	4
Attending to file	0	3	4

F.

4 P

[See G. O., 22nd May, 1862, A.]

[See G. O., 19th May 1855.]

[See G. O., 12th Oct. 1861, r. 14.]

[See G. O., 12th Oct. 1861, r. 15; G. O., 6th Nov. 1861, r. 5; C. C. O., 1st July, 1863, rr. 68—74.]

	£	s.	d.
Attending for copy of causes when bankrupt in custody	0	3	4
Paid for same			
Attending messenger or high bailiff, instructing him to prepare warrant to bring up bankrupt to surrender	0	3	4
Paid gaoler's fee	0	3	0
Ditto ditto travelling expenses, if at a distance from the court, at 10d. per mile one way, for the two, gaoler and prisoner, or sum actually paid, at discretion of taxing officer			
Notice to execution creditor or solicitor of application for release and postage	0	2	7
If any detaining creditors, each, including postage	0	1	1
Affidavit of notice and attending to be sworn, if execution or detaining creditor do not appear	0	3	4
The same for each detaining creditor	0	1	0
Attending court when discharge ordered absolutely or upon conditions and drawing order	0	6	8
Attending meeting of creditors, if it do not exceed three hours	0	10	0
For every hour after three, if the registrar shall give a certificate that such attendance was necessary and proper to be allowed	0	3	4

General Charges.

Attending to bespeak, and for copy of proceedings	0	2	0
Paid for same at the rate of 1½d. per folio of 90 words.			
Instructions for special affidavits	0	3	4
Drawing same, per folio	0	0	8
Ingrossing same, per folio	0	0	4
Attending court on each sitting of the court	0	10	0
If by agent, the solicitor being resident at a distance, and including letter of instructions	0	15	0
Two or more sittings or adjourned sittings held in the same bankruptcy at the same time are to be considered as one sitting only.			
Solicitors residing at a distance from the court are not to be allowed for travelling and loss of time in attending the court beyond the amount allowed for attendance by agent, except by the special direction of the commissioner or judge given at the time of the sitting.			
Notice of the filing of the petition or of adjudication, if necessary, and service	0	5	0
Drawing summonses for witnesses and copy and personal service, except summons, which should be served by the messenger, each	0	5	0
Beyond three miles, per mile extra	0	0	5
Attending to bespeak, and for a copy of the statement of account, sect. 141, for creditors' assignee	0	3	4
Paid for same			
Perusing same and attending assignees thereon	0	10	0
Writing letters, where necessary, each	0	2	0
Circular do.	0	1	0
Attendances, when necessary in the discretion of the master or registrar	0	3	4
Special attendances	0	6	8
Attending court on motions, drawing order, &c.	0	6	8
Instructions for brief, if counsel be allowed by the judge or a case stated for opinion of counsel	0	3	4
Drawing brief, per sheet	0	5	0
Copy ditto	0	2	6
Attending counsel	0	3	4
Notice of taxing	0	2	6
Attending taxing	0	3	4
Letters, messengers' forms, &c.	0	5	0
The same when agents employed	0	7	6
Paid allocatur stamp			
Other matters not provided for in the above scale, but necessarily done, may be allowed upon a similar scale as nearly as may be.			

Allowance to Witnesses.

	s.	d.	s.	d.
Gentlemen, merchants, bankers and professional men, per diem .. from	10	0	to	20 0
Tradesmen, auctioneers, accountant's clerks and yeomen, per diem	5	0	to	10 0

			<i>s.</i>	<i>d.</i>		<i>s.</i>	<i>d.</i>
Police inspector, artisans and journeymen, per diem	..	.. from	3	0	to	5	0
Police constable, labourers and the like, per diem	..	.. from	2	0	to	3	0
Females, according to station in life	..	.. from	1	0	to	5	0
Governors of gaols bringing up prisoners	..	.. from	5	0	to	7	6
Travelling expenses, sum reasonably paid, but not more than 6 <i>d.</i> per mile one way.							

Messenger's and High Bailiff's Fees.

Attending court on adjudication and serving duplicate on the bankrupt, and affidavit of service	£	s.	d.
	0	2	6
Preparing and executing warrant of seizure, when directed by the official assignee to take possession	0	5	0
Keeping possession—for each day the man is actually in possession, including affidavit of possession being actually kept	0	4	6
3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced.			
Summons to surrender, and service	0	3	4
Preparing advertisement for Gazette and attending to insert	0	3	4
If advertisement comprises more than one bankruptcy in one advertisement, each after the first	0	1	6
Paid insertion			
The fee and payments are to be apportioned by the taxing officer amongst the bankruptcies included in one advertisement as may appear to be fair and reasonable.			
The like charge for newspapers	0	2	0
Attending court, each sitting or meeting	0	2	0
Preparing warrant to bring up bankrupt, and transmitting the same to gaoler	0	2	7
On commitment of any person by commissioner or judge, executing the warrant (besides necessary expenses out of pocket to be also submitted to and taxed by the taxing officer)	0	10	0
Messenger's man travelling to place of possession, or to execute warrant of commitment, or for any other purpose specially directed by the court, per mile	0	0	5
His time, per day	0	4	6
His expenses, per day	0	4	6
If messenger directed by the court personally to travel, per mile	0	0	7
" " " his time, per day	0	10	0
" " " his expenses, per day	0	10	0
Preparing and service of notice to creditors by post, each creditor (To include postage and affidavit of service.)	0	0	4
Ditto, if required by commissioner or judge to be served <i>personally</i>	0	1	6
Mileage beyond three miles, per mile extra	0	0	5
The same charges for serving summons on witness, &c., and mileage.			

When an inventory is deemed requisite and is directed by the official assignee to be taken, a proper remuneration may be allowed for taking it, having regard to the time occupied and the nature of the property included in it.

Charges of Auctioneers, Brokers, Accountants, &c.

Sales by auction of goods, chattels or effects, 10*l.* per cent. on the first 100*l.* of gross amount realized, and 5*l.* per cent. after to 1,000*l.*

If sold by valuation, one half of the above charges.

These charges are to include all advertisements, lotting, delivering, &c.

If valuation made under sect. 126, a sum not to exceed 2l. 10s. per cent. for inventory and valuation up to 100l., and after to 400l., 1l. 5s. per cent.; and all above 1l. per cent.

Sales by auction of freeholds, leaseholds, policies, &c. :—

5*l.* per cent. on the first 300*l.*

then 2l. " " next 700l.

If sold by valuation, one-half of the above charges, or if bought in at the sale and afterwards sold by private contract *solely* by the negotiation of the auctioneer, one-half of the above charge. If not sold the expenses to be paid, and a fee to be allowed to the auctioneer, at the discretion of the taxing officer.

Sales by auction of farming stock,—5*l.* per cent. on the first 100*l.*, and 2*l.* 10*s.* per cent. on the remainder.

If sold by valuation, one-half of the above charges.

Sales of linen drapery, hosiery, silk mercery, &c., sold by tender,—

Under 400*l.* 4*l.* per cent.

Above 400*l.* to 1,000*l.* .. 3*l.* 10*s.* per cent.

Expenses to be allowed, 2*l.*, to include printing.

Accountant's Charges.

For preparing statement, investigating accounts, &c.:—

Principal's time, per day of eight hours, including affidavit s. d. 30 0

Clerk's time, per same day 10*s.* 6*d.* to 15 0

Fees of Registrars of County Courts.

5. Every county court registrar may, except in cases *in formâ pauperis*, take the registrar's and official assignee's fees set forth in the schedule hereunder set forth, and shall quarterly, on the 13th of January, the 13th of April, the 13th of July and the 13th of October in every year, transmit to the chief registrar of the court of bankruptcy an account of the said fees received by him, and of the number of adjudications of bankruptcy and of orders of discharge made during the preceding quarter, and there shall, except in cases *in formâ pauperis*, be paid to him out of the chief registrar's account the sum of 1*l.* in respect of the adjudication, and 1*l.* in respect of the order of discharge in each bankruptcy; and the said fees and payments shall and may, until further order, be received and retained by him as and for a remuneration in respect of his services as registrar and official assignee in all matters under the said act:—

[See G. O., 22nd
May, 1862, A. C.]

See General Order, 3rd February, 1855.

SCHEDULE LAST REFERRED TO.

	£	s.	d.
On dividend meeting	0	15	0
On an adjourned meeting or sitting	0	5	0
For office copies of proceedings, each folio of ninety words, sect. 53, 12 & 13 Vict. c. 106	0	0	1½
Drawing statement of account under sect. 143, if the bankrupt require assistance in that behalf, and report upon the state of the bankrupt's affairs, per folio	0	0	8
Ingrossing two copies, one to file and one to keep, per folio	0	0	4
Drawing abstract of account, sect. 142	0	5	0
Paid for printing ditto			
Sending copy by post to each creditor who has not proved, including postage	0	0	3
Preparing list of creditors entitled to dividend (sect. 178) and forwarding statement by post, each creditor, including postage	0	0	6
A per-centage on the estate collected by official assignee, of 5 <i>l.</i> per cent. on the amount collected.			

N.B.—In charging for drawing, ingrossing or copying any matter mentioned in the foregoing schedules, to which printed forms are applicable, the printed words are not to be computed by the folio, but the paper and print may be charged for as two folios, at the rate fixed for drawing, ingrossing or copying, as the case may be.

WESTBURY, C.
J. S. M. FONBLANQUE.
EDWARD HOLROYD.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

22nd February, 1862.—A.

It is ordered as follows, that is to say,—

Each official assignee shall, on the 11th April next and the 11th October next respectively, make a return to the chief registrar in a form to be furnished by him, of the amount of fees received by such official assignee [*according to the scale in force at the time of passing “The Bankruptcy Act, 1861,” so far as applicable] during the six months preceding the date of such return, and shall verify the same by oath, distinguishing the amount received in each bankruptcy and under the different heads in the scale, and after deducting such remuneration actually paid to necessary clerks, and such reasonable office expenses as shall respectively be allowed by the court, shall pay over the surplus to the credit of the chief registrar’s account, at such time and in such manner as the chief registrar shall direct.

* See 130 of Orders of 19th Oct. 1852, and Order of 19th June, 1856, and Order 36 of 12th Oct. 1861, and sect. 31, B. A. 1861.

Forthwith after the 11th October next the scale of fees to be taken by official assignees, in respect of duties performed by them, shall be subject to revision.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDERS.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

22nd February, 1862.—B.

It is ordered as follows, that is to say,—

1. Every petition *in formâ pauperis* in the court in London by a debtor entitled so to petition for adjudication of bankruptcy against himself shall be attested by Walter William Aldridge, the solicitor for petitions *in formâ pauperis* in the said court, or by one of his clerks, or by the keeper of the gaol in which the debtor petitioning shall be confined, and the petition shall be prepared, filed and prosecuted by such solicitor, and such solicitor shall also act in bankruptcies of prison debtors upon adjudications made by registrars which are to be prosecuted in the said court, and in every bankruptcy in the said court after the first meeting of the creditors, if no creditors’ assignee be appointed, the said solicitor for petitions *in formâ pauperis* shall act in the prosecution of such bankruptcy.

Appointment of solicitor to act for pauper bankrupts in London under Order 31 of 1861.

[Amended, G. O., 1st Dec. 1864. See as to remuneration, G. O., 22nd May, 1864, A.]

2. In every bankruptcy prosecuted by such solicitor and not being under a petition *in formâ pauperis*, the bill of costs, charges, fees and disbursements of such solicitor shall be taxed and paid in like manner as bills of costs of other solicitors in matters of bankruptcy are taxed and paid.

3. In every bankruptcy under a petition *in formâ pauperis*, or under an adjudication by a registrar against a prisoner debtor, the solicitor shall be allowed a fee of 3*l.* (exclusive of payments made for copies of proceedings) and 5*l.* per cent. on such assets (if any) as may be recovered under the bankruptcy, such fee and percentage and sum paid for copies to be in lieu of all the ordinary costs, charges, fees and disbursements under such bankruptcy, and to be paid out of the assets of the bankruptcy, in the event of there being assets applicable to the payment of costs; or if there be no assets, or not sufficient for that purpose, then such fees and payments so made or the deficiency, as the case may be, to be paid out of the chief registrar’s account.

4. The scale of remuneration to the solicitor as herein provided shall take effect from the 12th day of October last, and shall be in force for one year from that date, and shall then be subject to revision.

5. An account shall be made out by the solicitor on the 11th April and 11th October, 1862, or as soon after those respective days as conveniently may be, to the satisfaction of the chief registrar, of the amount of remuneration to be paid to him out of the chief registrar’s account.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDERS.

"The Bankruptcy Act, 1861" (24 & 25 Vict. c. 134).

22nd May, 1862.—A.

As to remuneration of solicitor appointed to act for pauper bankrupts in the country under Order 31 of 1861.

It is ordered as follows, that is to say,—

Every petition *in formâ pauperis* in a county court by a debtor entitled so to petition for adjudication of bankruptcy against himself shall be attested by the solicitor for petitions *in formâ pauperis*, or by one of his clerks, or by the keeper of the gaol in which the debtor petitioning shall be confined; and where a solicitor for petitions *in formâ pauperis* shall have been appointed by the lord chancellor for the county court in the district of which the gaol is situate, the petition shall be prepared, filed and prosecuted by such solicitor, so long as the proceedings shall continue in such county court; and if the proceedings are transferred for prosecution to either a court of bankruptcy or a county court, then the further proceedings shall be prosecuted by the solicitor appointed (if any) to act in pauper cases prosecuted in such last court.

Every solicitor so appointed to act as aforesaid shall also act in bankruptcies of prisoners upon adjudications made by a registrar, commissioner or judge under the provisions of section 101 or 102 of "The Bankruptcy Act, 1861," where the bankrupts do not employ their own solicitors, and where in any such bankruptcy no creditors' assignee is appointed, he shall then act if the bankruptcy is prosecuted in a court to which he has been appointed, and where the proceedings are directed to be prosecuted in a court for which such solicitor has not been appointed to act, then the proceedings shall be prosecuted by the solicitor appointed to act for such court (if any).

He shall also act in every bankruptcy in the said court after the first meeting of the creditors, if no creditors' assignee be appointed, and in every such bankruptcy the bill of costs, charges, fees and disbursements of such solicitor shall be taxed and paid in like manner as bills of costs of other solicitors in matters of bankruptcy are taxed and paid.

In every bankruptcy under a petition *in formâ pauperis*, or under an adjudication by a registrar against a prisoner, the solicitor appointed by the lord chancellor to act in such bankruptcy shall, where the proceedings are prosecuted to completion in the court for which he is appointed, be allowed three pounds, and five pounds per cent. on such assets as may be recovered under the bankruptcy. And where the proceedings are transferred to a court for which the solicitor of the county court in which the gaol is situate has not been appointed to act, such solicitor shall receive as remuneration one pound, and the solicitor of the court to which the proceedings are transferred shall receive two pounds, and five pounds per cent. on such assets as may be recovered under the bankruptcy.

The above fees, allowances and per-centage shall be in lieu of all the ordinary costs, charges and disbursements under such bankruptcy, and shall be paid out of the assets of the bankruptcy, in the event of there being assets applicable to the payment of costs, or if there be no assets, or not sufficient for that purpose, such fees, allowances and payments so made, or the deficiency, as the case may be, shall be paid out of the chief registrar's account.

The above scale of remuneration shall take effect from the date of the appointment of each such solicitor, and shall be in force for one year from the 12th October, 1861.

An account shall be made out by each such solicitor on the 11th April and 11th October, 1862, or as soon after as conveniently may be, to the satisfaction of the chief registrar, of the amount of remuneration payable in each case in which he has acted, and the amount received in each case, with the amount remaining due to him out of the chief registrar's account, and shall verify such return by oath or affirmation, and state that the whole of the sums received by him in each case is therein set forth.

Every registrar of a county court who may have attended or may hereafter attend at a gaol or prison, under the provisions of section 101 of the said act, shall be entitled to receive for such attendance one guinea and a half for the first day's attendance of six hours' duration, and one guinea for any subsequent day, and to be paid such sums out of "the chief registrar's fund."

An account shall be transmitted to the chief registrar on or after the 11th April and 11th October in each year, showing the amount due to each registrar, with a declaration of the truth thereof appended to every such account.

WESTBURY, C.
JOHN S. M. FONBLANQUE.
EDWARD HOLROYD.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134, s. 45).

22nd May, 1862.—B.

1. Together with every deed or instrument left after the 5th day of June next at the office of the chief registrar, for the purpose of being registered under section 192 of “The Bankruptcy Act, 1861,” and in addition to the affidavit or certificate required to be delivered to the chief registrar under the 5th condition of the said section, there shall be delivered to the chief registrar a copy of such deed or instrument, certified by the attorney or solicitor attesting the execution of the same by the debtor to be a true copy, and also, and as near as may be, in the form in the Schedule hereunder written, a full account of the debts of the debtor, which shall respectively amount to 10*l.* and upwards, together with the names, in alphabetical order, and the residences of his creditors, distinguishing those who have, in writing, assented to or approved of the deed, and such account shall be accompanied with an affidavit by such debtor verifying the same. [Amended by
General Order,
23rd July, 1862,
post.]

2. Any person being a creditor, or claiming to be a creditor, or the solicitor, or duly authorized attorney of a creditor, shall, on payment to the chief registrar, by bankruptcy stamp, of the fee of one shilling for every application for search, be permitted to inspect such copy deed or account, and to have an office copy, or an extract of every such copy deed or account, upon paying for the same at the like rate as for office copies of proceedings in bankruptcy. [For Schedule, see
next page.]

WESTBURY, C.
JOHN S. M. FONBLANQUE, Commissioner.
EDWARD HOLROYD, Commissioner.

SCHEDULE.

“THE BANKRUPTCY ACT, 1861.”

Form of the Account to be delivered to the Chief Registrar with Trust Deed, Composition or Inspectorship Deed. Sect. 192.

N.B.—This is to be an account to the best of the debtor’s knowledge, information and belief, of all the debts of the debtor* which shall respectively amount to 10*l.* and upwards, and including debts secured and showing the estimated value of any security.

A full account of the debts of ——— amounting to 10*l.* and upwards, together with the names and residences of his creditors, to the best of his knowledge, information and belief.

No.	Names and Residences.	If assenting.	Secured.		Unsecured.		Nature of Security.
			Amount. £ s. d.	Value or estimated value of the security to be deducted. £ s. d.	Amount. £ s. d.		
1	Anderson, John, 5, Fore Street, London, Brush Maker.	Assenting.. ..	1200 0 0	450 0 0	750 0 0		Mortgage dated 1st July, 1861, of two freehold houses at Hen- don, for securing 600 <i>l.</i> The estimated value of the secu- rity is 450 <i>l.</i>
2	Hopkinson, Joseph, 65, Cornhill, London, Jeweller.				360 0 0		
3	Watson, Henry, 45, Strand, London, Grocer.	Assenting.. ..			200 0 0		

No. of creditors	36	Amount of debts	£24,000	Amount of debts of creditors assenting	£21,300
Assenting	20		6000		
Not assenting	16		3		
	— 36		£18,000		

* In cases of partnership all the debts of the partnership, and the separate debts of each partner are to be given in separate lists.

GENERAL ORDERS.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

22nd May, 1862.—C.

It is ordered as follows, that is to say,—

Every county court registrar may, except in cases *in formâ pauperis*, where there are no assets, take the registrar's and official assignee's fees hereunder set forth, in addition to the fees set forth in the General Orders of the 19th of November, 1861, and may, until further order, receive and retain such fees as and for his remuneration in respect of his services as registrar and official assignee, in all matters under the said act.

	£	s.	d.
On first meeting	1	0	0
Sending copy of abstract, sect. 142, to each creditor, including postage	0	0	3
	0	5	0
On audit of creditors' assignee's or of official assignee's account under sect. 129, 24 & 25 Vict. c. 134	{ where sum in account does not exceed 100<i>l.</i>, and 2<i>s.</i> 6<i>d.</i> for every additional 50<i>l.</i> or fraction thereof.		
Stationery			
For application, by letters, for a debt	0	2	6
	0	0	6

On audit this fee is not to be allowed where debt not received, unless registrar can show that he has sent two letters for such debt; and whether the debt be received, or not, one fee only is to be allowed, although more than one letter may have been sent.

In cases *in formâ pauperis* these fees, and those allowed by the General Orders of 19th of November, 1861, where there are assets sufficient, may be deducted from them.

The registrar shall in these last-mentioned cases deduct 1*l.* for the petition, and 1*l.* for the order of discharge, and procure the stamps. The stamp for the petition should be cancelled by writing across it the name of the bankrupt, and then be filed with the proceedings.

In all cases of bankruptcies transferred by a bankruptcy court to a county court the fees to be received by the registrar and official assignee shall be the same as the fees payable in other cases, with the exception of the per-centage on the estate collected by the official assignee, which shall be as follows:—

- 5 per cent. to 300*l.*;
- 2½ per cent. from 300*l.* to 500*l.*;
- 1 per cent. from 500*l.* to 1,000*l.*;
- ½ per cent. from 1,000*l.* to 5,000*l.*;
- ¼th per cent. above 5,000*l.*;

with an allowance on dividend of 2*l.* per cent. on the first amount of 1,000*l.* or any less sum actually divided, and 1*l.* per cent. on all sums beyond 1,000*l.*

The return, required by the General Orders of the 19th of November, 1861, shall be made on the 13th of April and the 13th of October in each year, instead of on the days therein mentioned, and shall include only the sums claimed by the registrars on petitions and orders of discharge, as an account of the fees, received by them in each case for their own use, will have to be given in the annual return of the bankruptcy business under section 67 of “The Bankruptcy Act, 1861.”

The sums allowed in the General Orders of the 19th of November, 1861, to a messenger or his man for expenses and time per day, apply only to those cases where, in order to execute a warrant, or to take possession under direction of the official assignee, or for any purpose specially directed by the court, the messenger or his assistant is obliged to travel all day, and do not apply therefore in any case where the place to be travelled to is within the district of the county court in which the proceedings are.

The sum of 2*l.* allowed by the General Orders of 19th of November, 1861, on sales of linen drapery, hosiery, silk mercery, &c., sold by tender is not to be charged or allowed on a sale by auction of any property whatever.

WESTBURY, C.
JOHN S. M. FONBLANQUE.
E. HOLROYD.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

24th June, 1862.

It is ordered as follows, that is to say,—

That the office of the chief registrar for the registration of trust deeds, composition and inspectorship deeds entered into between debtors and their creditors, shall, on the 19th day of July next, be removed from the court of bankruptcy, Basinghall-street, in the city of London, to the chief registrar's office, in Quality-court, Chancery-lane, and that after that day every deed or instrument executed by a debtor shall be produced and left for the purpose of being registered, and every copy deed and account of the debts of the debtor, and every certificate of a trustee, and all affidavits and other documents relating to such deed or instrument, shall be filed at such last-mentioned office, and not elsewhere.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134).

23rd July, 1862.

It is ordered,—

The General Order bearing date the 22nd day of May, 1862, shall be altered and amended as follows:—

The copy to be delivered to the chief registrar, together with the original of every deed or instrument left at his office for the purpose of being registered under section 192 of “The Bankruptcy Act, 1861,” shall henceforth be certified to be a true copy by the attorney or solicitor attesting the execution of such deed or instrument by the debtor, or by any other attorney or solicitor acting on behalf of the debtor, or of any trustee or other party requiring such registration.

WESTBURY, C.

JOHN S. M. FONBLANQUE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDER.

“The Bankruptcy Act, 1861” (24 & 25 Vict. c. 134, s. 45).

8th August, 1862.

As to vacations. It is ordered as follows,—

1. That, during the time appointed by order for vacations in the high court of chancery, the office of the chief registrar of the court of bankruptcy, and the offices in Lincoln's-inn-fields, now connected with the court of bankruptcy, and used for the purpose of winding up the business of the late court for the relief of insolvent debtors, shall be closed at three o'clock in the afternoon, except on Saturdays, when the said offices shall be closed at two o'clock in the afternoon.

2. That a notice of the time appointed for each vacation in the said court of chancery be from time to time affixed in some conspicuous place in the several offices for ten days prior to the commencement thereof.

WESTBURY, C.

R. G. C. FANE, Commissioner.

EDWARD HOLROYD, Commissioner.

GENERAL ORDER.

"The Bankruptcy Act, 1861."

Wednesday, the 28th day of January, 1863.

I do hereby order and direct that in every case hereafter of a trust deed between a debtor and his creditors filed and registered under the 192nd section of "The Bankruptcy Act, 1861," in the office of the chief registrar of the court of bankruptcy, and immediately after the entry of such deed as directed by the 193rd section of the said act, the chief registrar shall cause a notice in the form hereto annexed to be sent by post (the postage being prepaid) to every creditor of such debtor who has not in writing assented to or approved of such deed.

As to notices of registration.

(Signed) WESTBURY, C.

Notice of Trust Deed.

"The Bankruptcy Act, 1861."

Office in Bankruptcy for the Registration of Trust Deeds, Quality Court, Chancery Lane.

To —.

186—.

Notice is hereby given under the provisions of "The Bankruptcy Act, 1861," — of — ha— made and entered into a trust deed for the benefit of h— creditors, which bears date the — day of —, 186—, and was registered in this office on the — day of —, 186—, No. —.

Edward William Smith, Chief Clerk.

NOTE.—You are stated to be a creditor for £—. A copy of the deed and an account of debts are filed in this office, and are open for inspection upon your attending personally or by agent.

Communications by letter cannot be attended to.

GENERAL ORDER.

"The Bankruptcy Act, 1861" (24 & 25 Vict. c. 134, s. 45).

18th January, 1864.

Whereas by number 154 of the General Rules and Orders in Bankruptcy, made on the 19th day of October, 1852, it is ordered that all dividend warrants under any bankrupt's estate which shall have been delivered to any official assignee by the accountant in bankruptcy for more than twelve calendar months, the same having been previously stamped by such accountant, but which shall not have been delivered to any creditor of such estate, shall forthwith after the expiration of such twelve months be brought or sent by such official assignee, together with two lists thereof, under each bankrupt's estate, to the said accountant, who shall thereupon compare the warrants with such lists, and cancel such warrants, and that one of such lists shall be certified by the said accountant and returned to the official assignee, who shall file such list with the proceedings of the respective bankruptcies, and the other of such lists be retained by the said accountant; and whereas irregularities and delays have arisen in the filing of the aforesaid lists: Now it is hereby ordered, that if hereafter any official assignee shall not within one month from the lapse of twelve months from the day of the declaration of any dividend under any bankrupt's estate, of which he shall have been appointed the official assignee, bring or send to the accountant in bankruptcy the dividend warrants which shall have remained unclaimed for a period of twelve months, together with the lists thereof, as directed by the aforesaid rules and orders, or shall not duly file such lists in manner therein mentioned, every official assignee so offending shall be liable to dismissal from his office. And it is ordered, that every list so to be brought or sent and filed as aforesaid shall not only bear the name of the estate to which it relates, but shall also show the date of the declaration of the dividend and the day on which such

list is filed, and that upon the unclaimed dividend warrants being brought or sent to the accountant and cancelled as aforesaid, it shall be the duty of the accountant forthwith to obtain an order from a commissioner of the court for the transfer of the amount of such unclaimed warrants from the general account of bankrupt's estate to the credit of the account intituled "The Unclaimed Dividend Account," and to see that such transfer is made accordingly; and that from and after the date of this General Order no dividend which shall have remained unclaimed for twelve months from the day of the declaration of dividend shall be paid to any creditor or other person applying for payment of the same, except on an order of a commissioner of the court of bankruptcy made on an affidavit of the facts; and it is lastly hereby ordered, that all dividends on bankrupts' estates payable in London shall on and after the first day of February next be paid at the bank of England.

WESTBURY, C.
EDWARD HOLROYD.
EDWARD GOULBURN.

GENERAL ORDER.

"The Bankruptcy Act, 1861."

Friday, the 24th day of June, 1864.

As to presenting
deed.

It is ordered that every deed or other instrument presented to the chief registrar for registration under the above-mentioned act shall, after the 30th day of June instant, be presented by a solicitor of the court of bankruptcy, and that every memorandum delivered with such deed or other instrument shall be signed by such solicitor.

WESTBURY, C.
EDWARD HOLROYD.
EDWARD GOULBURN.

GENERAL ORDER.

"The Bankruptcy Act, 1861" (24 & 25 Vict. c. 134).

December 1, 1864.

Whereas by a General Order, dated the 22nd day of February, 1862, it was ordered that every petition *in formâ pauperis* in the court in London, by a debtor entitled to a petition for adjudication of bankruptcy against himself, should be attested by Walter William Aldridge, the solicitor for petitions *in formâ pauperis* in the said court, or by one of his clerks, or by the keeper of the gaol in which the debtor petitioning should be confined, and that the petition should be prepared, filed and prosecuted by such solicitor, and that such solicitor should also act in bankruptcies of prison debtors upon adjudications made by registrars, which were to be prosecuted in the said court. And whereas the preparation, filing and prosecution of such petitions *in formâ pauperis* has been found to involve a very considerable charge on the account intituled "The Chief Registrar's Account," and it is no longer necessary that the said Walter William Aldridge should prepare, file and prosecute such petitions, or act under adjudications against prison debtors made by the registrars. Now, it is hereby ordered that the aforesaid General Order, so far as it relates to the preparation, attestation, filing and prosecution of petitions *in formâ pauperis*, and to adjudications against prison debtors, shall be and the same is hereby rescinded, and that hereafter the said Walter William Aldridge shall, under such General Order, only act in the said court in bankruptcies in which no creditors' assignee has been chosen.

WESTBURY, C.
EDWARD HOLROYD.
EDWARD GOULBURN.

ADDITIONAL FORMS.

No. 1.

Order for Bond.

In the Court of Bankruptcy, London.

In the matter of a trader debtor summons, wherein *A. B.* is plaintiff
and *E. F.* is defendant.

This — day of —, 186—.

The said defendant having appeared before me at the time and place appointed by the said summons, and having made a deposition upon oath under his hand, that he verily believes he has a good defence upon the merits to the whole [*or if a part state what part*] of the plaintiff's demand; and the court having heard what was alleged by Mr. —, attorney for the plaintiff, and Mr. —, attorney for the defendant: it is ordered that the defendant do within — days from this day enter into a bond in the penal sum of [*double the alleged debt*], and with such two sufficient sureties as the court shall approve of, to pay such sum or sums as shall be recovered, together with such costs as shall be given in any action which shall be brought by the plaintiff against the defendant for the recovery of his demand or any part thereof, in respect of which such deposition has been made; and it is ordered that the costs of — of and incidental to the affidavit and summons in this matter, shall abide the event of such action and be recoverable accordingly.

B. L. C. A.
1849, s. 79.

X. Y., Commissioner.

No. 2.

Order refusing Bond—Costs to abide event of Action.

"The Bankruptcy Act, 1861."

Court of Bankruptcy, —.

The — day of —, 186—.

In the matter of a trader debtor summons by *A. B.* against *C. D.*

Upon hearing *G. H.*, solicitor for the said *A. B.*, and *L. M.*, solicitor for the said *C. D.*, and upon reading the affidavit and notice upon which the said summons issued, and the deposition of the said *C. D.*, that he has a good defence upon the merits to the demand of the said *A. B.*, this court doth not require the said *C. D.* to enter into a bond pursuant to the above act, and this court doth order that the costs of, incident to and attendant upon the said affidavit, notice and summons do abide the event of the action which has been [*or is about to be*] commenced by the said *A. B.* for the recovery of the said demand; and this court doth lastly order that the said summons be and it is hereby dismissed.

E. G., Commissioner.

No. 3.

Order adjourning Consideration of Bond to enable Party to apply to a Judge at Chambers to pay Money into Court to abide event of Action.

"The Bankruptcy Act, 1861."

The Court of Bankruptcy, —.

The — day of —, 186—.

In the matter of a trader debtor summons by *A. B.* against *C. D.*

Upon hearing *G. H.*, solicitor for *C. D.*, and *L. M.*, solicitor for the within-named *C. D.*, and upon reading the affidavit and notice upon which the summons issued, and

the depositions of the said *C. D.*, that he has a good defence upon the merits to the demand of the said creditor, and the said *G. H.* having applied to this court to require the said *C. D.* to enter into a bond, pursuant to the said statute, this court doth adjourn the question of whether or not the said *C. D.* shall be required to enter into such bond, and also the further hearing of the said summons, until the — day of —, 18—, at — o'clock in the — noon precisely, to enable the said *C. B.* to apply to one of the judges of the court in which the said *A. B.* has commenced an action for the recovery of his said demand for an order that the said *C. D.* may pay the amount of the said demand into the said court, to abide the event of the said action.

E. G., Commissioner.

No. 4.

Affidavit of Service of Notice of Sureties.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of a trader debtor summons, wherein *A. B.* is plaintiff and *E. F.* is defendant.

G. H., of —, maketh oath and saith, that he did, on the — day of —, 186—, serve *A. B.*, of — [or *C. D.*, the attorney of the said *A. B.* in this matter] with a notice in writing, signed by the said *E. F.* [or by this deponent, as the attorney of the said *E. F.*], a true copy of which notice is hereunto annexed, marked A., and also an affidavit of *J. K.* and *L. M.*, the sureties in the said notice mentioned, as to their sufficiency, sworn in this court on the — day of —, 186—, by personally delivering the said notice and copy affidavit to the said *A. B.* [or by delivering to and leaving the same with *C. D.*, the attorney of the said *A. B.* in this matter.]

Sworn, &c.

G. H.

No. 5.

Affidavit of Execution of Bond.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of a trader debtor summons, wherein *A. B.* is plaintiff and *E. F.* is defendant.

Order 88 of 1852.

G. H., of —, maketh oath and saith, that he was present on the — day of —, 186—, and did see *E. F.*, of —, and *J. K.*, of —, and *L. M.*, of —, severally duly sign, seal, and as their respective acts and deeds deliver, a certain bond or obligation, bearing date the — day of —, 186—, whereby the said *E. F.*, together with the said *J. K.* and *L. M.*, became bound to *A. B.*, of —, in the penal sum of — pounds, with conditions thereunder written, and that the names *E. F.*, *J. K.* and *L. M.* set and subscribed against the seals of the said bonds, as the parties executing the same, are of the proper respective handwriting of the said *E. F.*, *J. K.* and *L. M.*, and that the name *G. H.*, set and subscribed to the said bond as attesting witness thereof, is of the proper handwriting of this deponent.

Sworn, &c.

G. H.

No. 6.

Order for Warrant to bring up a Prisoner under Sect. 71 of Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

The Court of Bankruptcy.

The — day of —, 186—.

Application having been this day made to me —, esquire, one of the commissioners of her majesty's court of bankruptcy, by Mr. S., of —, counsel for and on behalf of *C. D.* the petitioning creditor in the above matter, I do order that a warrant do issue directed to the governor or keeper of the prison at —, directing him to

bring before me the said *A. B.*, at present imprisoned or detained therein by the sheriff of —, at the suit of the said *C. D.*, under and by virtue of a writ of *capias ad satisfaciendum* issued to the said sheriff of —, on a judgment recovered in her majesty's court of —.

— Registrar.

G. H., Commissioner.

No. 7.

Warrant to bring up a Prisoner under Sect. 71 of Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

I, the undersigned commissioner of her majesty's court of bankruptcy authorized to act under the statute in that behalf, do hereby require you to bring *A. B.*, formerly of —, but now in —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, and who was brought into your custody on the — day of —, and still continues to be detained in such custody, before me —, esquire, one of the commissioners of the said court, on —, the — day of —, at — o'clock in the forenoon precisely, at the court of bankruptcy, Basinghall-street, in the city of London, in order that he may show cause wherefore he do not give security for the payment of the sum of —, being the debt due under and by virtue of judgment recovered by one *C. D.* (the petitioning creditor under the said petition) in her majesty's court of —, in respect of which he is now imprisoned or detained in the said prison at —, or in default thereof why he should not be adjudicated a bankrupt in pursuance of the statute in that behalf.

Given under my hand and the seal of the court this — day of —, 186—.

To the governor of her majesty's prison at —, his deputy or whom else this may concern.

— Registrar.

G. H., Commissioner.

No. 8.

Summons to Prisoner under Sect. 71 of Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

These are to will and require you *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, and to whom this summons is directed, personally to be and appear before me or some other commissioner who may be in attendance in chambers at the court of bankruptcy in Basinghall-street, in the city of London, on —, the — day of —, at — o'clock of the — noon, then and there to be examined respecting your ability to satisfy a debt of £ —, claimed by *C. D.* (the petitioning creditor under the said petition) upon and by virtue of a judgment of the court of —, for the said sum of —, recovered by the said *C. D.* against you the said *A. B.*, on the —, and of which said sum of —, of costs is sworn to be due from you to the said *C. D.* and the sum of — for taxed costs, making together the said sum of —, and for which amount of debt and subsequent costs you are now detained at the suit of the said *C. D.* in —. And further take notice, that if after service of this summons upon you you do not pay the said debt and costs or give security for the same to the satisfaction of me the said commissioner on your appearance to this summons, or if you shall not appear as aforesaid, having no lawful excuse or impediment allowed by the court, you may be adjudged a bankrupt in pursuance of the statute in that case made and provided.

Given under my hand and the seal of the court the — day of —, 186—.

G. H., Commissioner.

No. 9.

Examination at Return Day of Summons.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. Commissioner —.

X. Y., being sworn and examined at the time and place above mentioned upon his oath saith, that he is the keeper of —, and that the above-named — was delivered B. A. 1861,
sect. 71.

into his custody by the sheriff of —, on the — day of —, 186—, under and by virtue of a writ of *capias ad satisfaciendum* directed to the said sheriff of —, at the suit of *C. D.*, for a sum of £—, and is also detained in custody at the suit of *E. F.*, for the sum of £—. And further, that the said *A. B.* hath been since the said — day of —, 186—, continuously and is now detained lying in the said prison at — aforesaid under the said writ of *capias ad satisfaciendum*.

X. Y.

—
No. 10.

Notice by a Debtor in Custody of his Intention to petition for Adjudication of Bankruptcy against himself.

"The Bankruptcy Act, 1861."

B. A. 1861,
sect. 95.

Take notice, that I intend to petition the London bankruptcy court for adjudication of bankruptcy against myself.

Dated this — day of —, 186—.

A. B.

To the gaoler [*or* keeper] of the —, a prisoner in the gaol [*or* gaol (*or* prison)] in the — prison] at —, in the county of —.

—
No. 11.

Affidavit of Inability to pay Fees.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy in London.

B. A. 1861,
sect. 98, p. 1204.

A. B., a prisoner for debt in the debtors' prison for London and Middlesex, in the city of London, the petitioner named in the petition hereunto annexed, maketh oath and saith, that he hath not the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of bankruptcy.

Sworn at — prison, in the county [*or* city] }
of —, this — day of —, 186—. }
Before me, }

— Keeper of such prison.

If the petitioner affirm, alter the form accordingly.

—
No. 12.

Examination of Pauper Prisoner.

"The Bankruptcy Act, 1861."

At the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a prisoner for debt in the debtors' prison for London and Middlesex, Whitecross-street, in the city of London, by whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. Registrar —.

B. A. 1861,
sect. 99, p. 1204.

The above-named *A. B.* being this day sworn and examined upon his oath, saith that he was imprisoned in the prison aforesaid on the — day of —, 186—, at the suit of *C. D.*, of —, and has remained there ever since, being also detained there at the suit of *E. F.* and *G. H.*: and to the questions following gave the answers respectively inserted after each question, viz.:—

What is your trade, profession or occupation? How many years have you been in business? Where did you reside or carry on business for the last six months prior to your imprisonment? Where does your execution creditor reside or carry on business, and what is the amount you are indebted to him? What was the consideration for the debt? In what court was the judgment against you recovered? What is the total amount of your debts and liabilities? What is the total amount of your assets, and of what do they consist? Have you given any bill of sale, and if so state the particulars, and to whom such bill of sale was granted? Have you had any dealings or transactions other than in the regular course of business? Have you accepted or become

liable upon accommodation bills? Have you any books of account? Where do the major part of your creditors reside? Have you ever before been bankrupt, or taken the benefit of any act for the relief of insolvent debtors, or had any vesting order made against you, or compounded with your creditors, or been in prison for debt? To what cause do you attribute your insolvency? What money had you at the time of your arrest? What money have you received since? What money have you now?

No. 13.

Adjudication on a Debtor's Petition.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

This — day of —, 186—.

In the matter of *A. B.*, of —, by whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

I, the undersigned upon good proof upon oath before me this day taken, do find that the said *A. B.* has become bankrupt within the true intent and meaning of the laws of bankruptcy, and I do therefore declare and adjudge him bankrupt accordingly.
—, Registrar.

No. 14.

Affidavit to enlarge Time for filing Statement.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *Z. C. P.*, a bankrupt.

I, *H. E. B.*, of —, in the city of London, public accountant, make oath and say as follows:—

1. That the firm of —, of which firm I am a partner, have been engaged for some time past in investigating the affairs of the above-named bankrupt, and such investigation has been conducted by us with the concurrence of the principal creditors of the said bankrupt with a view to an arrangement.

That I believe the petition for adjudication against the bankrupt has been filed by him at the request of several of the principal creditors in order to protect the estate against several judgment creditors, and to insure an equal distribution of the assets.

The bankrupt has been for several years past largely engaged in business as a —, having very extensive transactions, and that his debts and liabilities are very large, and most of them are represented by bills of exchange, many of which are not yet due, and some of the holders thereof cannot be ascertained, and also that a large number of the creditors have liens and charges on property belonging to the bankrupt's estate, the particulars whereof cannot be defined without the investigation of voluminous correspondence and other documents relating to the bankrupt's estate.

That considerable inquiries and investigation will have to be made by the said bankrupt to ascertain the value of the securities held by creditors, and to obtain other information to enable him to prepare the statement required by this honorable court to be filed pursuant to the 93rd section of "The Bankruptcy Act, 1861." And I verily believe that fourteen days at the least will be required for the purpose of preparing such statement.

Sworn at the court of bankruptcy,
Basinghall-street, in the city of
London, this — day of —,
1862, before me,

H. E. B.

J. T. Miller, Registrar.

Exhibited the — day of —, 1862,—Re *Z. C. P.*

No. 15.

Order for enlarging Time for filing Statement under Sect. 93, Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

This — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon application made this day by Mr. —, solicitor to this petition, and upon reading the affidavits of *H. E.*, sworn and filed this day, it is ordered that the said bankrupt have fourteen days' further time (in addition to the three days allowed by the 4th General Order made under "The Bankruptcy Act, 1861") for filing the statement, pursuant to the 3rd section of the act; that is to say, until —, the — day of — next, inclusive.

W. H., Registrar.

G. H., Commissioner.

No. 16.

Order to extend Time for opening the Petition.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy, bearing date the — day of —, was duly filed.

Before Mr. Commissioner —.

Upon the application of Mr. —, the solicitor for *C. D.*, the petitioning creditor in the matter of the above mentioned petition, and it appearing that — : It is ordered that the time for obtaining adjudication of bankruptcy by the said *C. D.* against the said *A. B.*, be extended until — of the clock in the — noon precisely.

—, Commissioner.

No. 17.

Affidavit for dispensing with Personal Attendance of Creditor at opening.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of *A. B.*, late of —, in the county of —, and now a prisoner for debt, in the gaol of the — of —.

Order 12 of 1852.

I, *G. H.*, of —, in the — of —, make oath and say:—

1. That *C. D.*, the petitioning creditor in the above matter, resides at —, in the county of —. That *W. S.*, the attesting witness to the assignment for the benefit of creditors, which said assignment is relied upon by the said petitioning creditor, as the act of bankruptcy in the above matter, resides at —, in the county of —, and is an attorney. That the said *A. B.* is now a prisoner for debt, in the gaol of the city of —, and that — and — aforesaid are respectively distant from London above one hundred miles.

2. That the cost of summoning the said *W. S.* to London for the purpose of proving the said act of bankruptcy, including the fees to be paid to him for his attendance there, would amount to about — pounds. That it would also occasion the said *C. D.* considerable expense to attend in London for the purpose of proving the amount of the debt due to him from and the trading of the said *A. B.*

3. That great expense will be saved, if the court will allow the aforesaid petitioning creditor's debt, trading and act of bankruptcy to be proved by affidavit.

Sworn, &c.

G. H.

No. 18.

Order dispensing with the Personal Attendance of the Petitioning Creditor.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of *A. B.*, of &c., — against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—, by *C. D.*, of —.

Before Mr. Commissioner —.

Upon the application of Messrs. *C. D.* and *E. F.*, solicitors of *C. D.*, the petitioning creditor in the matter of this petition, and upon reading the affidavit of *G. H.* hereunto annexed, it is ordered that the personal attendance of the said petitioning creditor, at the opening of the said petition, be dispensed with, and his affidavit received in lieu thereof, and his personal attendance is hereby dispensed with accordingly. Order 12 of 1852.

—, Registrar.

E. G., Commissioner.

No. 19.

Deposition as to Petitioning Creditor's Debt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

This — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. Commissioner —.

C. D., of —, being sworn and examined at the time and place above mentioned, upon his oath saith, that the said *A. B.* was on and before the — day of —, and still is justly and truly indebted unto this deponent, in the sum of £ — [set out the amount of the debt, and the way it arises, and the consideration]: and this deponent further saith that the account hereunto annexed marked *A.* is a true debtor and creditor account between this deponent and the said *A. B.*, and this deponent hath not, nor hath any person or persons on his behalf, received any security for the said sum of £ — or any part thereof [here add, if any security has been given, except, setting forth the security].

E. H., Commissioner.

No. 20.

Deposition as to the Trading.

[Same heading as in No. 19.]

Before Mr. Commissioner —.

C. D. being sworn and examined at the time and place above mentioned, upon his oath saith, that he has known the said *A. B.* for the space of — now last past, during all which time the said *A. B.* did use and exercise the trade and business of —, and sought and endeavoured to get his livelihood thereby, as others of the same trade and business usually do.

—, Commissioner.

No. 21.

Depositions as to Acts of Bankruptcy.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

This — day of —, 186—.

In the matter of *A. B.*, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. Commissioner —.

By *Debtor's non-attendance to Trader Debtor Summons.*—*C. D.*, of —, and *G. H.*, of —, being severally sworn and examined at the time and place above mentioned, upon their oaths say, and first this deponent *C. D.*, for himself saith that he did, on the — day of —, make a joint affidavit in the court of bankruptcy, Basinghall-street, London, with one *L. M.*, in the form required by the statute in that case made and provided, whereby this examinant deposed that *A. B.* was justly and truly indebted to this examinant — in the sum of — pounds, and that the said *A. B.* was a trader within the meaning of the statute relating to bankrupts, and that the said *A. B.* resided

at — to the knowledge and belief of this examinant, and that an account in writing of the particulars of demand of this examinant, *C. D.*, amounting to the said sum of — with a notice thereunder written, in the form prescribed by the statute in that case made and provided, purporting to require immediate payment of the said debt was thereunto annexed, and whereby also the said *L. M.* deposed that he did, on the — day of —, serve the said *A. B.* with a true copy of the said account and notice. And this examinant further saith that the said sum of £ — is still due and owing from the said *A. B.* to him the examinant.

And this examinant *G. H.* for himself saith that he did on the — day of —, in pursuance of the authority and by the direction of the said *C. D.*, file in the said court of bankruptcy the said affidavit so sworn by the said other examinant. And that this examinant, as the — solicitor of the said *C. D.* the other examinant, did on the same day, by virtue of the statute in that case made and provided, sue out of the same court of bankruptcy a summons in the form specified in the schedule of the statute in that case made and provided, against the said *A. B.*, a true copy whereof is referred to in the affidavit of (a) — now exhibited to this examinant; and this examinant further saith that he did on — the — day of —, at the court of bankruptcy, Basinghall-street aforesaid, before —, one of the commissioners of this honorable court, duly attend the said summons referred to in the said affidavit of the said — from the hour of — o'clock (in the — noon), being the return of the said summons, until the hour of — in the — noon of the same day: And that the said *A. B.* did not nor did any one on his behalf attend the said summons, but although the said *A. B.* was duly called by the usher of the court upon his said summons, he the said *A. B.* wholly failed to appear to the said summons; and both these examnants further say that the said *A. B.* hath not paid, secured or compounded the said debt, or entered into any bond to pay such sum as should be recovered in any action in pursuance of, and according to, the direction of the statutes in that case made and provided.

By Declaration of Insolvency.]—C. D., of —, being sworn and examined at the time and place above mentioned upon his oath saith that the *A. B.* named in the annexed certified copy of declaration of insolvency, and therein described as *A. B.*, of &c., the original of which declaration was filed in the office of the chief registrar of the court of bankruptcy, on the — day of —, 186—, is the same person as the *A. B.* named in the said petition, and that the said declaration, of which the annexed is a certified copy, was signed by the said *A. B.*, in the presence of and attested by this deponent, and was so filed as aforesaid before the said petition was presented.

B. A. 1861, s. 70.

By departing the Realm.]—That, in the month of — last past, the said *A. B.* left England, with an intention of going to the kingdom of France, and that he is now residing at Boulogne, in the said kingdom of France, and has not since been within any part of the realm of England, as this examinant has been informed and verily believes. And this examinant further saith, that there are several creditors of the said *A. B.* who have not been able to recover or obtain payment of the debts respectively due to them by the said *A. B.*, in consequence of his being out of the realm aforesaid; and this examinant verily believes that the said *A. B.* went abroad as aforesaid with the intent to delay or defeat his creditors, some or one of them, in the recovery of the debts due and owing from him to them respectively [*then state the reasons for the deponent's belief*].

B. L. C. A. 1849,
sect. 67.

By departing from his Dwelling-house.]—That, in the month of — last past, the said *A. B.* departed from [his dwelling-house or his lodgings in the house of one *J. G.*,] in — street, in the said city of London (the same being his usual place of habitation), and has not since returned to the same. And this examinant saith, that he verily believes the said *A. B.* secretes himself from his creditors for fear of being served with process by his said creditors, some or one of them, for the recovery of their debts [*then state the reasons for the deponent's belief*].

By lying in Prison.]—That, on the — day of — last, the said *A. B.* was brought to the gaol for the county of — and delivered to him as such gaoler as aforesaid, by him to be detained in the said gaol under and by virtue of a certain writ of *capias ad satisfaciendum*, issued from her majesty's court of queen's bench, at the suit of one *C. D.*, for the sum of — pounds; and also under and by virtue of a certain warrant made thereon by the sheriff of the said county of —; and that the said *A. B.* hath remained from thence hitherto and still remains in custody in the said gaol at the suit aforesaid.

(a) This is the affidavit of the service of the summons on *A. B.*

By procuring himself to be arrested.—That the said *A. B.* did, on the — day of — last, procure himself to be arrested at the suit of one *C. D.*, and that he was, at such suit, accordingly arrested; and this deponent further saith, that he verily believes that the said *A. B.* so procured himself to be arrested fraudulently, with an intent to delay his creditors, some or one of them, in the recovery of the debts due and owing from him to them respectively, inasmuch [*here state the circumstances from which it would appear he so procured himself to be arrested*].

By procuring his Goods to be attached or sequestered.—That the said *A. B.* did, on the — day of —, procure his goods to be attached [*or sequestered*], by process issuing out of the mayor's court of the city of London, at the suit of one *J. G.*; and this deponent further saith, that he verily believes that the said *A. B.* so procured his goods to be attached fraudulently, and with an intent to delay his creditors, some or one of them, in the recovery of their just debts, because [*here state the circumstances of collusion and fraudulent preference*]. B. L. C. A. 1849, sect. 67.

By procuring his Goods to be taken in Execution.—That the said *A. B.*, on the — day of —, 186—, sent this deponent to inform one *J. G.* that his affairs were in an embarrassed state, and to offer to give him a cognovit to the amount of his debt, on which he could sign judgment and levy execution on his effects, to which offer the said *J. G.* did assent, and a cognovit was accordingly given to the said *J. G.* by him the said *A. B.*, and the said *J. G.* did thereupon sign judgment and issue execution against the goods of the said *A. B.*, and levied on the same; and this examinant saith, that he believes that such proceedings were had of the said *A. B.* without any previous application of the said *J. G.*, and for the purpose of giving to him a fraudulent preference over the other creditors of the said *A. B.*, he having previously told this examinant that he was in considerable difficulties, and must soon stop payment, but that the said *J. G.* had treated him, the said *A. B.*, with great indulgence, and had therefore greater claims on him. B. L. C. A. 1849, sect. 67.

By fraudulent Conveyance.—That on the — day of —, 186—, this examinant was present and did see the said *A. B.* duly sign, seal, and as his act and deed deliver, a certain indenture bearing date the day and year aforesaid, and made between the said *A. B.* of the first part, and *L. M.*, of —, and *N. O.*, of —, of the second part, and the several creditors executing the said indenture, of the third part, whereby the said *A. B.* [*here set out shortly the substance of the deed*]. And this examinant saith, that the name of the said *A. B.* subscribed against the seal of the said indenture now produced to him, this examinant, at the time of this his examination, and exhibited to —, esquire, one of the commissioners of her majesty's court of bankruptcy, is the proper handwriting of the said *A. B.*; and that the name of this examinant subscribed to the said indenture, as a witness to the execution thereof, is of the proper handwriting of this examinant. B. A. 1861, sect. 70.

By Paying or securing the Petitioning Creditor's Debt.—That on the — day of —, 186—, a petition for adjudication of bankruptcy was duly filed in her majesty's court of bankruptcy against *A. B.*, of —, by *C. D.*, of —; and that the said *A. B.*, after such petition was so filed as aforesaid, viz. on the third day of September aforesaid, did pay to the said *C. D.* the sum of £— [*or gave or delivered goods or other satisfaction or security to the said C. D.*] for his debt due to the said *C. D.* B. L. C. A. 1849, sect. 71.

No. 22.

Adjudication on a Creditor's Petition.

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. Commissioner —.

I, the said commissioner, upon good proof upon oath before me this day taken, do find that the said *A. B.* became bankrupt within the true intent and meaning of the law of bankruptcy, before the day of the date of the filing of the said petition against him: And I do therefore declare and adjudge him bankrupt accordingly.

E. H., Commissioner.

No. 23.

Notice to be added to Duplicate Adjudication.

To the above-named *A. B.*

Take notice, that the above is a duplicate of adjudication made by me the day and year above specified, whereby I have declared and adjudged you to be a bankrupt, and you, the said *A. B.*, are allowed seven days from the service of the above duplicate to show cause before me or any other commissioner of this court, against the validity of such adjudication.

[*G. O.*, 19th Oct.
1852, r. 14.]

In case you intend to dispute the adjudication, you are to cause notice of your intention so to do to be served on the petitioning creditor, or his solicitor, whose names appear on the back of this, and the registrar of this court, two days at least before the day of hearing cause against such adjudication, and in such notice you must state whether you intend to dispute the petitioning creditor's debt, the trading or the act or acts of bankruptcy.

—, Commissioner.

Name and address of petitioning creditor.

C. D., of —, —.

Name and address of solicitor.

E. F., Essex-street, Temple.

No. 24.

Notice of disputing Adjudication.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —.

[*G. O.*, 19th Oct.
1852, r. 14.]

I, the above *A. B.*, having been served with a copy of the adjudication under the said petition, do hereby give you notice that I intend to dispute such adjudication before the commissioner of the said court, authorized to proceed upon the said petition, on — next, the — day of —, 186—, at which time I intend to dispute the petitioning creditor's debt [or the trading or the act of bankruptcy] upon which the said adjudication had been grounded. Dated this — day of —, 186—.

A. B.

To *C. D.*, of —, and *E. F.*, of —, solicitor,
and to —, registrar of the said court.

No. 25.

Extending Time to show Cause against Adjudication.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

[*G. O.*, 19th Oct.
1852, r. 16.]

Upon the application of Mr. —, solicitor for the said bankrupt, this court doth extend the time allowed for the bankrupt to show cause against the adjudication made against him in this matter to the — day of —, 186—.

—, Commissioner.

No. 26.

Bankrupt's Surrender and Consent to Adjudication being Advertised.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy was filed on the — day of —, 186—.

B. L. C. A. 1849,
sect. 104.

I, the above-named *A. B.*, having been served with a duplicate of the adjudication under the above-mentioned petition, hereby surrender myself, and give my consent to the same being forthwith advertised.

A. B., Bankrupt.

Witness, *C. D.*

Be it remembered—that *A. B.*, the said bankrupt, did, at the time and place above mentioned, surrender himself to me, and further time was given him to appear again, until the — day of —, at — o'clock in the — noon precisely.

G. H., Registrar.

No. 27.

Notice to Gaoler and Detaining Creditors.

Take notice, that in pursuance of the order (*a*), of which the above is a copy, I shall attend at the said —, on —, the — day of — instant, at — o'clock in the forenoon, and examine —, a prisoner for debt, detained in the said gaol at your suit, and I shall have power to make an order of adjudication of bankruptcy against him, and for his release from prison, unless cause is shown to the contrary.

To —.

(*a*) Order for registrar to attend gaol.

No. 28.

Examination of Prisoner.

"The Bankruptcy Act, 1861."

At the — in the — of — this — day of —.

In the matter of —, a prisoner, named in the return made by the keeper of the said prison to the court of bankruptcy, on the first day of —, 186—.

Before —, Esquire,
Registrar.

The above-named — being this day sworn and examined, upon his oath saith, I was imprisoned in the prison aforesaid, on the — day of —, at the suit of —. B. A. 1861, sect. 101.

No. 29.

Petition by Person appointed to represent a Lunatic.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, a lunatic prisoner for debt in the gaol of —, at —, in the county of —,

To the — Court of Bankruptcy.

The humble petition of *C. D.*, of —,

Showeth,

That your petitioner hath been appointed by the court of bankruptcy in London B. A. 1861, sect. 106.
[or for the — district] to represent *A. B.*, a lunatic prisoner for debt in the above gaol [or prison].

That the said *A. B.* is unable to meet his [or her] engagements with his [or her] creditors.

Your petitioner therefore prays that the said *A. B.* may be adjudged a bankrupt.

And your petitioner will ever pray.

Signed by the petitioner on the — day of —, 186—.

C. D.

No. 30.

Adjudication in the case of a Lunatic Prisoner.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, a lunatic prisoner for debt in the gaol [or prison] at —, in the county of —.

Upon reading the petition of *C. D.*, appointed by this court to represent the above-named *A. B.*, praying that adjudication of bankruptcy may be made against the said *A. B.*, and also the affidavit of *C. D.*, stating that the several allegations in the said petition are true: I, the undersigned registrar, do find that the said *A. B.* has become bankrupt, within the true intent and meaning of the law of bankruptcy, and I do therefore declare and adjudge him bankrupt accordingly.

G. H., Registrar.

No. 31.

Summons to Bankrupt to surrender at First Meeting.

"The Bankruptcy Act, 1861."

Whereas a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy for the — district, on the — day of —, 186—, against you *A. B.*, of —. And you, having been duly adjudged bankrupt, are hereby summoned and required to surrender yourself to —, a registrar of the said court, at the first meeting of creditors, to be held before the said registrar at —, on the — day of —, 186—, at — o'clock in the — noon precisely, and also to the court at the public sitting to be appointed by the court for you, the said bankrupt, to pass your examination, of which sitting due notice will be given in the *London Gazette*, when you will be required to submit yourself to be examined and to make a full and true discovery and disclosure of all your estate and effects, according to the directions of the statutes made and now in force concerning bankrupts. And herein fail not at your peril.

Given under my hand and under the seal of the court this — day of —, 186—. To —, the above-named (L.S.) —, Registrar.
bankrupt.

At the Court of Bankruptcy for the — district.

— day of —, 186—.

Be it remembered, that the within-named — came and surrendered himself to the court under the adjudication of bankruptcy made against him on the — day of —, 186—, which I hereby certify, and grant him protection until the — day of — at — at — o'clock in the — noon precisely.

At —.

— day of —, 186—.

Be it remembered, that the said — came before me and prayed further protection, which was granted until the — day of — at — at — o'clock in the — noon precisely.

No. 32.

Affidavit of Service of the Summons to surrender.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of *A. B.*, of —, a bankrupt.

I, *L. M.*, make oath and say, that I did on the — day of — serve *A. B.*, the above-named bankrupt, with a duplicate of the summons hereunto annexed by delivering the same to — and leaving it with him [or by affixing up such summons on the street door of the house, situate at —, and leaving the same there, that being the last known place of business of the said *A. B.*; and that I did on the — serve *A. B.*, the above-named bankrupt, with a duplicate of the summons hereunto annexed, by fixing up such summons on the street door of the house situate at —, and leaving the same there, that being the last known place of abode of the said *A. B.*].

Sworn at —, in the —, this — day of —.

Before me —.

N.B.—It is not necessary to leave the summons at both the place of abode and business of the bankrupt, although for greater caution it is often done.

No. 33.

Notice of Bankrupt's Application for Release from Prison.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy for the — district.

In the matter of *A. B.*, of —, against whom a petition for adjudication of bankruptcy, bearing date the — day of —, 186—, hath been filed.

B. L. C. A. 1849,
sect. 104.

Take notice, that the above-named *A. B.*, having been duly adjudged bankrupt under the said petition, will, on — the — day instant, at the hour of — of the clock in the — noon precisely, surrender to the said petition, and obtain

his protection from arrest, pursuant to the practice in bankruptcy. And this is further to give you notice, that the said *A. B.*, being now detained in the — prison for — for debt, at your suit, will, on the — day of —, at the hour above mentioned, apply to —, esquire, one of the commissioners of her majesty's court of bankruptcy, at —, in the —, or to such other commissioner as will be then sitting, for an order for his immediate release from prison, in pursuance of the statute intituled "The Bankruptcy Act, 1861." And this is further to give you notice to produce at the time and place aforesaid the record or entry of judgment under which the said — is now confined and detained.

Dated this — day of —, 186—.

To —.

No. 34.

Affidavit of Service of Notice.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy for the — district.

In the matter of *A. B.*, of —, a bankrupt.

I, *C. D.*, —, of —, in the county of —, make oath and say, that I have [or did, on] this — day of —, 186—, served [or serve] *G. H.*, of —, the detaining creditor of the said bankrupt, and *X. Y.*, of —, his solicitor, with true copies of the notice hereunto annexed, by putting such copies into the letter box at the receiving house for general post letters, situate —, addressed in manner following, that is to say:

And that a proper postage stamp was affixed to each of the said notices.

To —.

C. D.

Sworn at —, in the —, this — day of —, 186—.

Before me —.

—, Registrar.

No. 35.

Order for Bankrupt's Release.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the bankruptcy of *A. B.*, of —.

Whereas the above-named *A. B.* has been duly adjudged bankrupt within the true intent and meaning of the statutes made and in force concerning bankrupts, and the said bankruptcy is in due course of prosecution in her majesty's court of bankruptcy; and whereas the said bankrupt has duly surrendered to such adjudication, and obtained from this court his protection from arrest pursuant to the practice in bankruptcy; and whereas it appears to me, the undersigned commissioner, that at the time of obtaining such protection the said bankrupt [or if sued in another name, sued as, &c.] was in [here insert name of prison], for debt, at the suit of —, and that he is still there; and he having now applied to me for his immediate release, and given notice of such application to his said detaining creditor [or creditors], as by affidavit now filed appears: Now, I, the undersigned commissioner, having heard —, the said bankrupt —, do in pursuance of the statute hereby order the immediate release from prison of the said bankrupt — at the suit of the — creditor [or creditors] aforesaid.

B. L. C. A. 1849
sect. 104.

To the sheriff of —.

—, Commissioner.

To the keeper of the said prison [or gaol], and to any other officer having the said bankrupt in his custody.

No. 36.

Order for Bankrupt's Release on finding Bail.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall Street, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—This being the day appointed for the bankrupt to make application for his release from custody, at the suit of certain detaining creditors: Now, upon

hearing Mr. — in support of such application, and Mr. — for the assignees, and Mr. — for the petitioning creditor, in opposition thereto, it is ordered, that the bankrupt be not released from custody except upon his finding two sufficient sureties in £ — each, and giving security himself for £ — for his appearance at the several sittings appointed by the court of bankruptcy for his appearance, and the said bankrupt is to give — clear days' notice to the assignees and detaining creditors, of the proposed sureties.

— Commissioner.

No. 37.

Affidavit for First Meeting to be held at some place other than the Court.

[Same heading as in No. 36.]

We, *E. F.*, of — and *G. H.* of — [*&c.*], make oath and say, that we are creditors of the said bankrupt. That the said bankrupt carried on his business at L., in the county of — for — months [*or years*], immediately preceding the filing of the petition for adjudication of bankruptcy against the said bankrupt; and that we and nearly all the creditors of the said *A. B.* live near to, and in the neighbourhood of L. aforesaid. That we cannot attend the first meeting to be held under the said petition for adjudication without inconvenience, loss of time and expense, if such meeting be held at the court of bankruptcy, in London; but that we can attend such meeting without inconvenience, loss of time or expense, if the court will appoint such meeting to be held at L. aforesaid. That we believe that the holding of the meeting at L. will not be convenient to the majority of the creditors of the said bankrupt.

Sworn at — on the — of — this — day of — 186—.

Before me —.

Exhibited to me — this — day of — 186—.

N.B.—If the petitioning creditor does not join in this affidavit, a notice of the intended application must be served on him.

No. 38.

Notice of Application to be given to Petitioning Creditor.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt.

To *C. D.*, petitioning creditor in the said matter.

Take notice, that on the — day of — 186—, an application will be made to the court of bankruptcy, London, that the first meeting to be held under the said bankruptcy may be appointed to be held at L., in the county of —.

R. S., Solicitor for *E. F.*, *G. H.*, &c., creditors of the said bankrupt.

No. 39.

Order on Application.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of — 186—.

In the matter of *A. B.*, of —, a bankrupt.

Upon the application of Mr. —, solicitor for *E. F.*, *G. H.*, creditors of the said bankrupt, and upon the reading of the affidavit of the said creditors, and hearing Mr. —, solicitor for *C. D.*, the petitioning creditor in opposition to the application [*or no petitioning creditor appearing in opposition thereto*]: This court doth refuse the application [*or doth appoint the first meeting of creditors in this matter to be held at L. in the county of —*].

— Commissioner.

No. 40.

Summons to Witness before Adjudication.

"The Bankruptcy Act, 1861."

By virtue of a petition for adjudication of bankruptcy, filed against *A. B.*, of —, directed to her majesty's court of bankruptcy, Basinghall-street, London.

B. A. 1861,
sect. 109.
[*G. O.*, 12th Oct.
1861, r. 3.]

B. L. C. A. 1849,
sect. 100.

These are to will and require you to whom this warrant is directed personally to be and appear before —, the commissioner acting in the prosecution of the said petition, on — day, the — day of —, 186—, at the court of bankruptcy for the —, in Basinghall-street, London, then and there to be examined, by virtue of the said petition and the statute in such case made and provided. And hereof you are not to fail at your peril.

Given under my hand and seal of the court, this — day of —, 186—.

To C. D., of —.

E. G., Registrar.

No. 40 a.

Affidavit of Service of Summons.

[This may be the same as form No. 32.]

No. 41.

Appointment of Official Assignee.

“The Bankruptcy Act, 1861.”

In the Court of Bankruptcy, London.

— day of —, 186—.

In the matter of A. B., of —, a bankrupt.

I hereby appoint C. D., one of the official assignees of this court, to be and act as official assignee in the bankruptcy of the above-named bankrupt, in manner directed by the statute in that behalf.

—, Registrar.

—, Commissioner.

No. 42.

Warrant of Seizure.

“The Bankruptcy Act, 1861.”

In the Bankruptcy court.

Whereas —, and the same has been filed, and thereupon an order of adjudication has been made pursuant to the statutes in such case made and provided:—These are, therefore, by virtue of the premises and the statutes in that behalf, to will and require, authorize and empower you, and every one of you to whom this warrant is directed, forthwith to enter into and upon the house and houses, and other the premises of — the said —, and also in all other place and places belonging to — the said —, where any of — goods and moneys are or are reputed to be: you shall seize all the ready money, jewels, plate, household stuff, goods, merchandise, books of accmpts, and all other things whatsoever, belonging to — the said —, except his necessary wearing apparel, as excepted by the said statutes in that behalf. B. L. C. A. 1849, sect. 109.

And such things as you shall so seize, you shall cause to be inventoried and appraised by honest men of skill and judgment, and the same you shall so return to the said court with all convenient speed. And that what you shall so seize you shall safely detain and keep in your possession until you shall receive other orders for the disposal thereof from this court: and if necessary, to break open any house, chamber, shop, warehouse, door, trunk or — chest of the said —, where any of — goods or moneys are, or are reputed to be.

Given under my hand and the seal of the court — day of —, in the year of our Lord one thousand eight hundred and sixty- —.

To —, one of the messengers of the said court, and to his assistants.

(Seal)

—, Commissioner.

—, Registrar.

No. 43.

Warrant of Seizure.

Whereas a petition for adjudication of bankruptcy was on the — day of —, 186—, filed against A. B., of —, under which the said A. B. hath been duly found and declared bankrupt; and whereas it hath appeared to me, —, esquire, one of her majesty's commissioners of the court of bankruptcy, and acting in prosecution of the said petition, that part of the estate and effects of the said A. B. is now in the city of —, in the kingdom of Ireland: These are, therefore, by virtue of the said petition and the statute in such case made and provided, to will, require, authorize and empower B. L. C. A. 1849, sect. 110.

you to enter into and open any house, chamber, shop, warehouse, door, trunk or chest of the said *A. B.*, at — aforesaid, where any of the property of the said *A. B.* shall be reputed to be, and the same being there found to seize the same, and what things you shall so seize you shall cause to be inventoried and appraised by honest men of skill and judgment, and return the same to me with all convenient speed. And what you shall so seize you shall also safely detain and keep in your possession until I shall give you order for the disposal thereof. And in case of resistance or the not having the key or keys of any *door or lock* belonging to such place or places as aforesaid, where any of the property of the said *A. B.* shall be reputed to be, you shall break open or cause the same to be broken open for the better execution of this my warrant; this my warrant being first duly verified upon oath according to the true intent and meaning of the statute in that case made and provided: and you, — (to whom this my warrant is directed), previously to the execution of it, deposing upon oath, before some of the justices of the peace residing in the county of —, in Ireland aforesaid, that you are the proper person named in this my warrant.

Given under my hand and seal this — day of —, 186—.

[To be signed and sealed by the commissioner.]

To —, our messenger.

. This warrant must be verified upon oath by the solicitor to the fiat before the mayor or chief magistrate of the place where the fiat is executed, and who must affix his official seal; and the messenger must also make oath of his identity before a justice of the peace of the county where the warrant is to be executed; the forms are as follow:—

Affidavit of the Solicitor.

L. M., of &c., gent., maketh oath and saith, that he is the solicitor under a petition for adjudication, filed and now in prosecution against *A. B.*, in the warrant hereunto annexed mentioned, and that he filed the same as such solicitor against the said *A. B.*; and this deponent saith that he did see —, esquire, a commissioner of her majesty's court of bankruptcy acting in prosecution of the said petition, sign and seal the said warrant hereunto annexed; and that the name of the commissioner subscribed to the said warrant is of the proper handwriting of the said commissioner.

Sworn at the Mansion-house, in the city
of London, this — day of —, 186—,
the common seal of the said city being
at the same time affixed.

L. M.

A. B., Mayor.

Affidavit of the Messenger.

C. D., one of the messengers of the court of bankruptcy [for the — district], maketh oath and saith, that he did receive the warrant hereunto annexed from —, the commissioner of the said court of bankruptcy, as his proper warrant to seize the effects of the said *A. B.*, at —, in the kingdom of Ireland, and that he this deponent is the identical person named in the said warrant, and to whom the execution thereof is given by the said commissioner. And this deponent further saith, that certain property, part of the effects of *A. B.* (the bankrupt named in the annexed warrant), is reputed to be in the city of —, in Ireland.

Sworn at —, in the county of }
—, this — day of —, }
186—, before me, —.

C. D.

A. B. [one of her majesty's justices of the peace for the county of Cork.]

If the warrant is to be executed in Scotland, then, besides a similar affidavit, it must (by 12 & 13 Vict. c. 106, s. 111) be backed or indorsed with the name of a judge ordinary, or justice of the peace, in Scotland.

Indorsement on the Warrant.

The within warrant, having been duly verified as by law required, was exhibited before me this — day of —, 186—, by *C. D.*, the person within named and appointed to execute the same, he the said *C. D.* deposing upon oath before me that he is the person named in the warrant. These are therefore to authorize the said *C. D.*, and all officers in the law in Scotland, to execute the same within the county [or the burgh] of —.

Given under my hand this — day of —, 186—.

C. D.

One of her majesty's, &c.

[Judge ordinary or justice of the peace.]

No. 44.

Warrant against Debtor about to quit England.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt, against whom a petition for adjudication has been filed.

Whereas, by evidence taken upon oath, it hath been made to appear to the satisfaction of me, the undersigned commissioner of the court of bankruptcy, acting in the prosecution of a petition for adjudication in bankruptcy filed and now in prosecution against *A. B.*, of —, in the county of —, bearing date the — day of —, [*when issued under s. 119, add, and under which the said A. B. has been adjudged bankrupt,*] that there is reason to suspect and believe that the said *A. B.* is about to quit England, [*or to conceal his goods and chattels,*] unless he be forthwith apprehended: B. L. C. A. 1849, sect. 99.

These are therefore to authorize and require you, immediately upon the receipt hereof, to take into your custody the said —, and him safely convey to — prison, and him there to deliver to the keeper of the said prison, who is hereby authorized and required to receive the said — into his custody there, and him safely keep and detain, without bail, until this court, or the court of appeal in chancery sitting in bankruptcy, shall make an order to the contrary, and for so doing this shall be your sufficient warrant.

Given under the seal of the court of bankruptcy, this — day of —, 186—.

J. B., Commissioner.

To —, messenger of the court, and his assistants, and to —, keeper of the said prison, or his deputy there.

—

No. 45.

Order to Postmaster General.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Upon the application of *C. D.*, or —, it is ordered, that for a period of three months from the date of this order, all post letters directed or addressed to the said bankrupt at —, being the place of which he is described in the petition for adjudication of bankruptcy aforesaid, shall be re-directed, re-addressed, sent or delivered by the postmaster-general, or officers acting under him, to the said *C. D.*, as official assignee to the above estate; and that a duplicate of this order be forthwith transmitted to the postmaster-general, or officers acting under him. B. L. C. A. 1849, sect. 124.

—, Commissioner.

—

No. 46.

Order to sell Bankrupt's Estate before Choice of Assignees.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

It appearing upon the representation of *G. C.*, official assignee of the estate of the said bankrupt, that the holding possession of the property of the said bankrupt, until an assignee shall be chosen, would be prejudicial to the said bankrupt's estate, I do order that the said official assignee be at liberty to sell and dispose of the said property, or any part thereof, before any assignee shall be chosen by the creditors of the said bankrupt. B. L. C. A. 1849, sect. 40.

E. H., Commissioner.

—

No. 47.

Form of Letter of Attorney (a).

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt.

Gentlemen,—I hereby authorize you, or any one of you, to attend the meeting or meetings of creditors in this matter, advertised or directed to be holden at the court of bankruptcy, Basinghall-street, London, on the day advertised in the London Gazette, or at such other place or time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion for —, and in — name to vote for or against any proposal or resolution that may be then submitted under the 109th, 110th, 122nd, 124th, 125th, 174th, 185th, 186th and 187th sections of "The Bankruptcy Act, 1861;" and in the choice of assignee or assignees of the estate of the said bankrupt, and for — [or either of us] to accept such appointment of assignee; and also respecting the allowance to be made to the said bankrupt under the said act; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be holden herein for any of the purposes aforesaid, or for the declaration of dividend, or for any other purpose whatsoever.

Dated this — day of —, 186—.

Witness to the signature of —.

To —.

Exhibited to me this — day of —, 186—.

(a) In addition to the form contained, General Order, 12th October, 1861, Sched. 19.

No. 48.

Memorandum of Registrar at First Meeting and Appointment of Last Examination.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

Before Mr. Registrar —.

In the bankruptcy of *A. B.*, of —.B. A. 1861, sect.
109.

Memorandum.—This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, whereof the notice required in that behalf has been duly given, I, the undersigned, a registrar of the said court, sat at the time and place above mentioned pursuant to such notice, to take the proof of debts, and for the choice of assignees under the said bankruptcy, and — creditor having proved and — creditors' assignee having been chosen, the — day of —, at — o'clock in the — noon, was appointed by the court for the said bankrupt to pass his last examination and to make application for his discharge.

—, Registrar.

No. 49.

Order for Transfer of Proceedings to a County Court.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the bankruptcy of *A. B.*, of —.B. A. 1861, sect.
109.

Whereas a majority in number and value of the creditors present at the first [ad-journed] meeting of creditors held this day in the above bankruptcy, pursuant to "The Bankruptcy Act, 1861," section 109, have resolved and determined that the proceedings in the bankruptcy shall be transferred to and henceforth prosecuted in the county court of —, holden at —; and whereas this court is satisfied that the said resolution was duly made: This court doth order that the petition for adjudication of bankruptcy and the proceedings in the above bankruptcy be transferred to and henceforth prosecuted in the said county court.

C. D., Registrar.*E. F.*, Commissioner.

No. 50.

Order directing no Day to be advertised for Last Examination where Bankrupt had not resided or carried on Business within the District of the Court.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

— day of —, 186—.

Before Mr. Registrar —.

In the matter of *A. B.*, formerly of Sunville, near Limerick, in that part of the united kingdom called Ireland, then of Whitehall, near Limerick aforesaid, afterwards of the Bridge of Allan, near Glasgow, in that part of the united kingdom called Scotland, late of Folkestone, in the county of Kent, and now temporarily residing at — street, Croydon, in the county of Surrey, a — in the militia.

Memorandum.—That this being the day appointed, pursuant to notice in the London Gazette, for the first meeting of creditors under the petition for adjudication of bankruptcy filed by the said *A. B.*

I, the undersigned, a registrar of the said court, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts, and for the choice of assignees under the said petition, when no creditor appeared to prove his debt or accept the office of assignee; and it appearing to me that the bankrupt had only lived within the jurisdiction of the court of bankruptcy for five weeks and three days, and that no order had been made for the prosecution of the bankruptcy in this court, and that the great majority in number and value of the bankrupt's creditors resided in Ireland, where the bankrupt had previously resided, I directed that no day should be advertised for the bankrupt to pass his last examination until he shall have applied to the court for liberty to prosecute the bankruptcy in this court.

C. D., Registrar.

No. 51.

Memorandum of Choice of Assignees.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, at Basinghall-street, London.

— day —, 186—.

In the bankruptcy of *A. B.*, of —.

Memorandum.—This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which ten days' notice has been given in the London Gazette, we whose names are hereunder written, being the majority in value of the creditors of the said *A. B.* present at this meeting and who have proved debts, have chosen and do hereby nominate and choose *C. D.*, of —, to be the creditors' assignee of the said bankrupt's estate and effects, and we do desire that he may be appointed such assignee accordingly. B. A. 1861, sect. 116.

	£ s. d.		£ s. d.

I accept the said trust and appointment.

C. D.

I, *E. H.*, esquire, a commissioner of the said court, do hereby approve of and ratify and confirm the said choice.

— Registrar.

G. H., Commissioner.

(a) — hereby appoint Mr. —, of —, to act as — solicitor and attorney as assignee in the above bankruptcy.

(a) If no attorney be appointed strike this out, and when the appointment is made, file an appointment signed by the assignee.

No. 54 a.

Discharge of Bankrupt from Custody by a Creditor desirous of Proving.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt.

I, the undersigned, authorize you [*the gaoler or person in whose custody the bankrupt is*], to discharge the said bankrupt *A. B.*, and who is now in your custody at my suit in respect of [*state the demand, which must be prior to the bankruptcy*], and which it is my intention forthwith to claim [*or prove*] against the estate of the said bankrupt.
To the gaoler [*&c.*] L. M.

B. L. C. A. 1849,
sect. 182.

No. 55.

Affidavit for Proof of Debt with or without Security.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy for the — district.

In the matter of the petition for adjudication against *A. B.*, of —, a bankrupt.

I, *C. D.*, of —, make oath and say, that the said *A. B.*, the person against whom a petition for adjudication of bankruptcy hath been lately filed, and is now in prosecution, was at and before the filing of the said petition, and still is, justly and truly indebted to me this deponent in the sum of —; for which said sum of —, or part thereof, I say, that I have not, nor hath any person by my order, or to my knowledge or belief, for — use, had or received any manner of satisfaction or security whatsoever [*if there is no security stop here*], save and except the — hereinafter mentioned.

B. L. C. A. 1849,
sect. 164.

Note or bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.
				£ s. d.			

Sworn at —, in the county of —, this — day of —, 186—.

Before me —.

The Court of Bankruptcy.

Exhibited to me this — day of —, 186—, under a petition for adjudication of bankruptcy.

No. 56.

Proof of Debt by Creditor in Court with or without Security.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, in London.

— day of —, 186—.

Before Mr. —.

In the matter of *A. B.*, of —, a bankrupt.

J. W., of —, being sworn and examined at the time and place aforesaid, upon his oath saith, that the said *A. B.*, the person against whom a petition for adjudication of bankruptcy is filed, was at and before the filing the said petition, and still is, justly and truly indebted to this deponent in the sum of £ —, for which said sum of £ —, or any part thereof, this deponent hath not, nor hath any person by his order, or to this deponent's knowledge or belief for his use, received any security or satisfaction

B. L. C. A. 1849,
sect. 164.

whatsoever [if there is no security stop here], save and except the bill of exchange hereinafter mentioned :—

Note or bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.
				£ s. d.			

No. 57.

Proof of Debt by Agent in Court, with or without Security.
“The Bankrupt Law Consolidation Act, 1849.”

In the Court of Bankruptcy, London [as before].

The — day of —, 186—.

Before Mr. —.

In the matter of *A. B.*, of —, a bankrupt.

B. L. C. A. 1849,
sect. 164.

C. D., of —, agent of —, being a public company incorporated [or authorized to sue and bring actions], and carrying on business at —, being sworn and examined at the time and place aforesaid, upon his oath saith, that *A. B.*, the person against whom a petition for adjudication of bankruptcy is filed, was at and before the filing the said petition, and still is, justly and truly indebted to said company, in the sum of £—, for —; for which said sum of £—, or any part thereof, this deponent saith that he hath not, nor hath the said company, nor hath any person by his order, or by the order of the said company, or to this deponent’s knowledge or belief for the use of the said company, had or received any security or satisfaction whatsoever [if there is no security, leave out from here to the word “mentioned” inclusive and description of security], save and except the — hereinafter mentioned :—

Note or bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.
				£ s. d.			

And this deponent further saith, that he is duly authorized to make this affidavit as agent of the said company, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt to the best of his knowledge and belief still remains unpaid and unsatisfied.

No. 58.

Proof of Debt by Clerk, or Person in Employment of a Creditor, with or without Security.
“The Bankruptcy Act, 1861.”

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

B. L. C. A.
1849, sect. 164.

E. F., clerk [state whether the deponent is the clerk, or what is the nature of his employment; and give the names in full and the place of business of the creditors], of —, clerk to *C. D.*, of —, maketh oath and saith that the said *A. B.*, the above-named bankrupt, against whom a petition hath been lately filed, and is now in prosecution, was at and before the filing of the said petition for adjudication of bankruptcy against him, and still is, justly and truly indebted to the said *C. D.* in the sum of £—, for which said sum of £—, or any part thereof, this deponent saith that he hath not nor hath the said *C. D.*, nor hath any person by the order of this deponent, or by the order of

the said *C. D.*, or to this deponent's knowledge or belief, for the use of the said *C. D.*, had or received any manner of satisfaction or security whatsoever [*if there is no security leave out* "save and except the — hereinafter mentioned"]; and I further say, that I am duly authorized by my said principal to make this affidavit, and that it is within my knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt to the best of my knowledge and belief still remains unpaid and unsatisfied.

Note or bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.
				£ s. d.			

Sworn at —, in the — of —, this — day of —, 186—.
Before me —.

The Court of Bankruptcy.

Exhibited to —, this — day of —, 186—, under a petition for adjudication of bankruptcy against —.

No. 59.

Proof of Debt by Official or Creditors' Assignee.

"The Bankrupt Law Consolidation Act, 1849."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

C. D., against whom a petition for adjudication of bankruptcy hath lately been filed and is now in prosecution, and *E. F.*, official [*or creditors'*] assignee of the said last-mentioned bankrupt's estate, severally make oath and say—and first, this deponent *C. D.* saith that the said *A. B.*, against whom a petition for adjudication of bankruptcy hath lately been filed and is now in prosecution, was, at and before the filing of the said petition, justly and truly indebted to the said *C. D.* and to — as assignees of the estate and effects of this deponent in the sum of £ — for — before — became bankrupt; for which said sum, or any part thereof, this deponent hath not, nor hath any other person to his knowledge and belief, received any security or satisfaction whatever; and this deponent *E. F.* saith, that the said sum of £ — still remains due to this deponent, and to —, as assignees aforesaid, and that he has not, nor have the said — or either of them, or any other person to his or their use, to this deponent's knowledge or belief, received for the said debt any security or satisfaction whatsoever [*if there is no security stop here*], save and except the — hereinafter mentioned:—

Note or bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.
				£ s. d.			

No. 60.

Claim by a Creditor.

C. D., of —, claims a debt amounting to the sum of £ — as being due to the said *C. D.* from *A. B.*, a bankrupt, for —.

No. 61.

Claim by a Clerk or Agent.

E. F., clerk [or agent] to *C. D.*, of —, claims a debt amounting to the sum of £ — as being due to the said *C. D.* from *A. B.*, a bankrupt, for —.

No. 62.

Order allowing Proof for Premiums upon a Policy of Insurance.

“The Bankruptcy Act, 1861.”

In the Court of Bankruptcy, —.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

B. A. 1861,
sect. 154.

Upon the application of Mr. — of counsel [or solicitor] for *C. D.*, of —, this day made to the court, and upon hearing Mr. — for the assignees, and reading the affidavit of *L. M.*, of —, and it appearing that the bankrupt was, at the time of his adjudication as a bankrupt, liable, by reason of a contract made by him with the said *C. D.*, to pay yearly the sum of —, being the yearly premium upon a certain policy of insurance effected in the [here state the office in which policy effected and describe the policy]; and that the said *C. D.* was desirous that a value should be set by the court upon his interest under such contract: This court doth declare that the interest of the said *C. D.* under said contract is of the value of —, and doth order that the said *C. D.* be admitted to prove for the said amount of £ — and to receive dividends thereon.

X. Y., Commissioner.

No. 63.

Order assessing Amount for Unliquidated Damages.

In the Court of Bankruptcy, —.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

B. A. 1861,
sect. 153.

Upon the application of Mr. *G. H.*, solicitor for *C. D.*, of —, surgeon, this day made to the court, and upon hearing Mr. — for the assignees, and the bankrupt consenting thereto, and upon reading the affidavit of —, and it appearing that the said *C. D.*, at the time of the said *A. B.* being adjudicated a bankrupt, had a demand against the said bankrupt in the nature of damages by reason of the breach of a warranty given by the said bankrupt to the said *C. D.* on the sale to him of a brown mare, on the — day of —, and that the said *C. D.* had paid to the said bankrupt the sum of forty pounds on the faith of such warranty; and that the said *C. D.* was desirous that the amount of damages sustained by him by reason of the aforesaid breach of warranty should be ascertained by the court without the intervention of a jury, and he prayed the court to assess the amount of such damages accordingly: This court doth assess the amount of such damages at the sum of forty pounds.

J. K., Commissioner.

No. 64.

Order for settling the Value of an Annuity.

[Same heading as in No. 63.]

B. L. C. A. 1849,
sect. 175.

Upon the application of Mr. *G. H.*, solicitor for *C. D.*, of —, this day made to the court; and upon hearing Mr. — for the assignees, and the bankrupt consenting thereto, and upon reading the affidavit of —; and it appearing that the said *C. D.*, at the time of the filing of the petition for adjudication against the said *A. B.*, had a demand against the said bankrupt in respect of a certain annuity, heretofore granted unto *C. D.* by the said bankrupt by [here state shortly the purport of the annuity deeds], in consideration of the sum of —, and the sum paid by *C. D.* to *A. B.* was a consideration for the same; and that the said *C. D.* was desirous that the value of such annuity should be ascertained by the court: This court doth declare the value of the said annuity to be £ —.

X. Y., Commissioner.

No. 65.

Order to admit Proof on a contingent Debt.

[Same heading as in No. 63.]

Upon the application of Mr. *G. H.*, solicitor for *C. D.*, of —, this day made to the court; and upon hearing Mr. — for the assignees, and the bankrupt consenting thereto, and upon reading the affidavit of —; and it appearing that the bankrupt at the time of filing the petition for adjudication of bankruptcy against him had contracted a debt with the said *C. D.*, payable upon a contingency—to wit, to pay to the said *C. D.* the sum of £ — [here state the contingency upon the happening of which the debt was to be payable], and that the said contingency had not happened before the filing of such petition; and that the said *C. D.* was desirous that the court should set a value upon such debt: This court, being satisfied that the said *C. D.* had not, when such debt was contracted, notice of any act of bankruptcy by the bankrupt committed, doth declare the value of such debt to be £ —, and doth order that the said *C. D.* may be admitted to prove for the said amount of £ — and to receive dividends thereon.

B. L. C. A. 1849,
sect. 177.

—, Commissioner.

No. 66.

Order to admit Proof on a Liability contingent at the Bankruptcy.

[Same heading as in No. 63.]

Upon the application of Mr. —, solicitor for *C. D.*, of —, this day made to the court; and upon hearing Mr. — for the assignees, and the bankrupt consenting thereto, and upon reading the affidavit of —; and it appearing that the bankrupt, before the filing of the petition for adjudication of bankruptcy against him, had contracted a liability to pay to him the sum of £ — upon a contingency; to wit [here state the contingency upon the happening of which the liability to pay could be enforced], and that the said contingency had not happened, and the demand in respect thereof had not been ascertained before the filing of such petition; and that the said *C. D.* was desirous that he might be admitted to claim in respect of such liability for such sum as the court should think fit: This court, being satisfied by the affidavit of — that the bankrupt was a trader according to the law of bankruptcy, and by it that the said *C. D.* had not at the time such liability was contracted notice of any act of bankruptcy by such bankrupt committed, doth order that the said *C. D.* shall be admitted to prove for the sum of £ — and to receive the dividends thereon.

B. L. C. A. 1849,
sect. 178.

X. Y., Commissioner.

No. 67.

Petition by Creditors (who had proved Debts under a Separate Adjudication) to be admitted to prove Debts under a subsequent and Joint Adjudication, in order that they might oppose Bankrupt's Discharge under the Joint Adjudication.

In the Court of Bankruptcy.

In the matter of *J. W.* and *G. L.*, bankrupts.

The humble petition of *P. R.* and *E. R.*, of, &c. [stating the names and descriptions of the other creditors.]

Showeth,

That on or about the — day of —, 186—, an adjudication of bankruptcy was made against the said *G. L.*, by the description of *G. L.*, of —, in the county of —.

That the said *G. L.*, at the time of his so becoming bankrupt, was and still is justly and truly indebted unto your petitioners in divers large sums of money, amounting in the whole to the sum of £ —.

That all your petitioners, except the above *W. H.* and *P. H.*, have proved their respective debts under the said adjudication.

That the first meeting of the creditors, held under the said adjudication, was called in order to consider whether the said adjudication should be annulled; and at such meeting a considerable number of the creditors attended, when it was unanimously resolved that the said adjudication should be prosecuted.

That at the same meeting it was proposed, that if the brother of the said *G. L.* (who resides in — and has the chief part of the bankrupt's effects in his own hands) should make remittances to the assignees, and the said *G. L.*, the bankrupt, should exert himself for the benefit of his creditors, and act to the satisfaction of the assignees under the said adjudication, that the creditors then present would not only not oppose

the said bankrupt's discharge, but would recommend the other creditors not to oppose the same, and to agree likewise that the said bankrupt should be allowed (as an encouragement to do his duty) double the sum that is allowed by act of parliament to bankrupts conforming to the law; or a motion, or proposal, to that effect was made and agreed to at the said meeting.

That since the said meeting another adjudication in bankruptcy, made on the — day of — last, hath been awarded against *J. W.* and the said *G. L.* by the names and descriptions of *J. W.* and the said *G. L.*, both of —, in the county of —, grocers and co-partners, and under which they have been declared bankrupts.

That your petitioners have been informed and believe, that the debts proved under the said last-mentioned adjudication are of a very inconsiderable amount, in comparison with those proved under the first-mentioned adjudication.

That your petitioners find, by an advertisement in the London Gazette, of the — day of —, 186—, that an order of discharge has been granted to the said *J. W.* and *G. L.*, and that unless an appeal be duly entered against the judgment of the court it will be delivered to the bankrupt.

That your petitioners are informed, that the said order of discharge will discharge the said *G. L.* from the debts he owes to your petitioners and all other his separate creditors.

That your petitioners (and, as they believe, also the generality of the separate creditors of the said *G. L.*) are dissatisfied with his conduct; and your petitioners are apprehensive, that if the said *G. L.* shall obtain his discharge, the assignees under the first-mentioned adjudication will find it very difficult to recover out of the hands of the brother of the said *G. L.* in — the money and effects due from him to the bankrupt's estate.

Your petitioners therefore humbly pray, that your petitioners may be at liberty to prove their respective debts under the said adjudication. And that the said order of discharge, so far as respects the said *G. L.*, may in the meantime not be delivered. And that your petitioners may be at liberty to oppose the allowance of the said *G. L.*'s discharge under the said adjudication; and, for that purpose, that the said order of discharge may be recalled and delivered up to be cancelled. And your petitioners will ever pray, &c.

P. R.

E. R.

W. E., &c.

Signed by the said *P. R.*, *E. R.*,
W. E., &c., in the presence of
W. S.

Let the parties concerned, or their agents, attend me hereon, and this petition is appointed to be heard on the — day of —, 186—. Hereof give notice forthwith.
[L. s.] —, Registrar.

No. 68.

Petition to allow Joint Creditors to prove under a Separate Adjudication.

In the matter of *A. B.*, a bankrupt.

To —.

The humble petition of *E. F.*, of —, —, joint creditor of the said *A. B.*, and *C. D.*, his late partner, on behalf of himself and all other the joint creditors of the said *A. B.* and *C. D.*

Showeth,

That previously to the — day of — last, the said *A. B.* and *C. D.* carried on business in co-partnership together as —, and became indebted to your petitioner and other persons in respect of such co-partnership.

That there is a joint property of the said *A. B.* and *C. D.*

That, on or about the — day of — last, a petition for adjudication of bankruptcy was filed against the said *A. B.*, under which he was declared bankrupt; and the assignees chosen and appointed under the said petition have taken possession of such joint property.

That your petitioner is informed, and believes, that the said *C. D.* is insolvent [or, that he is gone abroad, and resides out of the jurisdiction of this honorable court].

Your petitioner, therefore, humble prays your honor that you will be pleased to order that your petitioner, and all other joint creditors of the said *A. B.* and *C. D.* may be allowed to prove their debts against the separate estate and effects of the said *A. B.* And your petitioner will ever pray, [&c.]

E. F.

No. 69.

Common Order.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon the application —.

It is ordered —.

—, Commissioner.

No. 70.

Memorandum of Non-surrender of Bankrupt at First Meeting.

[Add after "discharge," in form 48; the bankrupt did not surrender at the said first meeting of creditors, pursuant to the requirement of the summons thereto duly served on him, as showed by the affidavit of — duly filed with these proceedings, or to the notice in the London Gazette.]

No. 71.

Order enlarging Time to Surrender, where Bankrupt too Unwell to attend Meeting.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—That I, *E. H.*, esq., one of the commissioners of her majesty's court of bankruptcy acting in the prosecution of the said petition, sat at the time and place above mentioned, pursuant to notice in the London Gazette for that purpose, and it appearing that the said *A. B.* was impeded by bodily infirmity from attending before me, and surrendering and submitting himself for examination before me: Now I, the said *E. H.*, upon reading the affidavit of *S. S.*, of —, in —, surgeon, do allow the said impediment to be a lawful one, and do excuse the said *A. B.* from attending before me, pursuant to the said notice, this day, and do give him such further time to surrender as may be allowed for finishing his final examination.

B. A. 1861,
sect. 109.

L. H., Commissioner.

No. 72.

Petition to annul an Adjudication with the Consent of Creditors.

"The Bankruptcy Act, 1861."

In the bankruptcy of *A. B.*, of —, draper.

To the Court of Bankruptcy, London.

The humble petition of the said *A. B.*,

Showeth,

That a petition for adjudication of bankruptcy was filed in the court of bankruptcy, on the — day of —, against me, the said *A. B.*

That your petitioner was found and declared a bankrupt under the said petition. And *C. D.*, of —, was appointed official assignee, and *J. G.*, of —, was chosen and appointed the creditors' assignee of the estate and effects of your petitioner.

That the several persons whose names are hereunto subscribed are all the creditors of your petitioner who have proved or claimed any debt under the said adjudication; and all the said creditors of your petitioner are consenting that the said adjudication should be annulled, and for that purpose have signified their respective consents in writing to the prayer of this petition, at the foot hereof, as by affidavit, also annexed, appears.

Your petitioner, therefore, humbly prays that your honor will be pleased to order the said adjudication to be annulled.

(Signed) *A. B.*

Memorandum.—We whose names are hereunto subscribed, being all the creditors who have proved their debts under the said bankruptcy, do hereby declare that we consent to the adjudication against the said *A. B.* being annulled.

J. W., for self and partner *L. M.*
C. J. [*&c. &c.*]

Affidavit in support of the Petition.

I, *E. K.*, of — street, in the city of London, gentleman, make oath and say, that I was present on the — day of — last, and did see [*here the names of the creditors, with their descriptions, as on their respective proofs; and if partners, state which partner signed, e. g., C. D. for himself and his partners E. F. and G. H., of —*] severally sign their names to the above consent, and that the names *J. W.*, for self and partner *L. M.*, and *C. J.*, set and subscribed to the said consent in writing are of the respective hands-writing of the said *J. W.* and *C. J.*, &c. *E. K.*

Sworn at —, this — day of —, 186—.

Before me —.

W. H., Registrar.

No. 73.

Order annulling an Adjudication.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Whereas the above-named *A. B.* did, on the — day of —, 186—, prefer unto this court his petition in the above matter, praying that this court would order that the adjudication of bankruptcy against the said petitioner might be annulled: Now, upon hearing the said petition, and the affidavits filed in support thereof, and the assignees of the bankrupt's estate by their solicitor agreeing thereto, this court doth order that the adjudication of bankruptcy made against the said *A. B.*, bearing date the — day of —, 186—, be annulled, and the same is hereby annulled accordingly.

No. 74.

Advertisement of Bankruptcy having been annulled.

Whereas a petition for adjudication of bankruptcy was filed on the — day of —, 186—, against *A. B.*, of —, under which the said *A. B.* was adjudicated a bankrupt: This is to give notice, that the said adjudication is, by order of the court of bankruptcy, bearing date the — day of —, 186—, annulled.

No. 75.

Memorandum of Resolution of Creditors.

In the Court of Bankruptcy, London.

The — day of —, 186—.

Before Mr. Registrar —.

In the matter of *F. M. D. D.*, a bankrupt.

Whereas the above-named bankrupt filed his petition in this honorable court, under "The Bankruptcy Act, 1861," on the — day of —, 186—, and was duly adjudged bankrupt thereon, and this being the first meeting of creditors held for the purpose of proof of debt and choice of assignees under the said petition; and the said bankrupt having proposed to us, his said creditors, to take the proceedings out of bankruptcy, and to enter into the following arrangement—that is to say, to assign to *J. J.*, of —, and *B. R. W.*, of —, both in the county of —, as trustees for the general body of creditors, a vested reversionary interest of one-third equal part (after payment of a mortgage debt of £—) in the proceeds of a policy of insurance effected with the Amicable Society, in the year 186—, for £—, and now worth by the accumulations

and profits £—, the premiums on the policy and the interest on the mortgage being secured by the legal assignment of a government pension payable during the life of the person insured, now aged sixty-nine: this interest to be forthwith sold by public auction (with the concurrence of all other parties interested already obtained), and subject to the expenses of this petition and arrangement to divide the proceeds rateably between and amongst his creditors as soon as possible; and further, that after the expiration of five years from the date of the final resolution, to pay into the hands of the trustees aforesaid a sum of one hundred pounds per annum, by half-yearly payments of fifty pounds, for the gradual liquidation of the debts mentioned in the proceedings in this honorable court, and continue to make such payments until the whole of such debts are paid and satisfied: Now we, the undersigned, being a majority in value of the creditors present, resolve that the proceedings in bankruptcy shall be suspended, and no further proceedings be taken therein, and agree to accept the offer of the said bankrupt hereinbefore set forth.

[Signatures of Creditors.]

No. 76.

Memorandum of Registrar thereon.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

Before Mr. Registrar —.

In the matter of *F. M. D. D.*, a bankrupt.

Memorandum.—That this being the day appointed, pursuant to notice in the London Gazette, for the first meeting of creditors under the petition for adjudication of bankruptcy filed by the said *F. M. D. D.*, I, the undersigned, a registrar of the said court, sat at the time and place above mentioned pursuant to such notice, to take the proof of debts, and for the choice of assignees under the said petition. Several proofs were tendered and received, and the major part in value of the creditors present resolved to take the proceedings out of bankruptcy, and wind the estate up under a deed, in accordance with the resolution come to by the creditors present, and filed with the proceedings; and no assignee was appointed, and I did adjourn this meeting until the — day of —, 186—, in order that notice of such resolution may be given to every creditor by the official assignee, pursuant to the 110th section of the said act.

—, Registrar.

No. 76 a.

Another Form.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

Before Mr. Registrar —.

In the matter of *P. C. S.*, of —, a bankrupt.

Memorandum.—This being the day appointed, pursuant to notice in the London Gazette, for the first meeting of creditors under the petition for adjudication of bankruptcy, filed by the said *P. C. S.*, the said *P. C. S.*, having filed his balance sheet, has proposed to his creditors who have proved their debts at the said meeting, to pay to all his creditors forthwith a composition of — shillings in the pound, in discharge of their respective debts or claims upon his estate; and whereas it appears to the undersigned, being the major part in value of the creditors present at the said meeting, to be desirable to resolve, and they do hereby resolve, that the said offer be accepted, and that it is desirable that no further proceedings should be taken in the bankruptcy.

[Creditors' signatures here follow.]

I, —, esq., registrar of the above court, do hereby, in pursuance of this statute, adjourn the said meeting until the — day of — next, at 12 o'clock at noon, in order that all the creditors of the said *P. C. S.* may have notice of the said resolution, and I direct that all proceedings in the said bankruptcy be suspended in the meantime.

—, Registrar.

No. 77.

Memorandum of Resolution at an Adjourned Meeting.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *J. B. S.*, a bankrupt.

Before Mr. Registrar —.

Memorandum.—This being the day appointed for the adjourned meeting of creditors in this matter, pursuant to the resolution passed by the major part in value of the creditors of the said bankrupt, present at the first meeting of creditors held in this matter before Mr. Registrar —, at the court of bankruptcy, London, on the — day of —, 186—, whereby it was resolved that no further proceedings be taken in this matter in bankruptcy, and that the said meeting should be adjourned for fourteen days, that is to say, to this day at noon, in order that notice of such resolution might be given, as required by the 110th section of "The Bankruptcy Act, 1861," and such notice having been duly given, as by affidavit filed herewith appears, we the undersigned, being a majority in number representing three-fourths in value of the creditors present at this adjourned meeting, do, pursuant to the 110th section of "The Bankruptcy Act, 1861," resolve that the proceedings in bankruptcy in this matter be suspended, and that the estate and effects of the said bankrupt shall be wound up and administered by *C. D.*, of — (the creditors' assignee of the estate and effects of the said bankrupt duly appointed at the said first meeting), out of bankruptcy, in like manner as if the same remained in bankruptcy, so far as the difference in the mode of administration will admit.

No. 77 a.

Another Form.

"The Bankruptcy Act, 1861."

In the matter of — of —, in the county of —, a bankrupt.

We, the undersigned, being a majority in value representing three-fourths in value of the creditors present at this adjourned meeting, do resolve that the proceedings in bankruptcy be suspended, and that the estate and effects of the said bankrupt shall be wound up and administered in manner following; that is to say, that the said — shall execute a deed, covenanting to pay the amount of his several debts by — instalments of — in the pound; the first instalment to be payable on the — day of — next; the second instalment on the — day of — next; and the third instalment on the — day of — next; and that the said — shall have the full use and possession of and property in his real and personal estate, to enable him to perform his said covenant.

No. 77 b.

*Another Form of Resolution for accepting a Proposal under Sect. 110.*B. A. 1861,
sect. 110.

At a meeting of the creditors of the bankrupt, adjourned from the — day of —, 186—, to this — day of —, 186—, pursuant to advertisement in the London Gazette, and notice duly given to each creditor by the creditors' assignee, we, the undersigned, being a majority in number representing three-fourths in value of the creditors present at the said adjourned meeting, do resolve to accept the proposal made by the bankrupt at the meeting of the creditors of the said bankrupt, held on the — day of —, 186—, and that the proceedings in bankruptcy shall be suspended; and we do hereby further resolve, that the estate and effects of the bankrupt shall be forthwith delivered to the said bankrupt, except as hereinafter mentioned, and that he shall be and is hereby appointed the manager thereof for the purposes hereinafter expressed; and we do hereby further resolve, that the bankrupt shall with all convenient speed proceed to sell and realise the manufactured stock, to be delivered to him by virtue of this resolution, and also work up and manufacture the unmanufactured stock, so to be delivered as aforesaid, and sell and realise the same, and receive and pay the proceeds thereof into the bank of *M. S. and C.*, at —, in the county of —, to the credit of *W. D.*, the creditors' assignee of the said bankrupt's estate and effects. That three months from the date of this meeting the creditors' assignee shall pay to all the creditors of the said bankrupt the first instalment of —

in the pound, in case sufficient monies shall have been received and paid over to him, as provided by this resolution.

And we do hereby further resolve that any surplus in the hands of the creditors' assignee, over and above the amount required of him to pay the first instalment of —, shall be paid to the bankrupt after this first instalment shall have been paid.

And we do hereby further resolve that the second instalment of — shall be secured by the joint and several notes of hand of the said bankrupt and *G. M.*, of —, to be forthwith given and made payable six months from the date of this meeting.

And we do hereby further resolve that the monies now in the hands of the official assignee shall be applied by him in payment of the costs of the proceedings in bankruptcy incurred up to the present time, and that the balance shall be paid over to the creditors' assignee and retained by him until the bankrupt shall have received his discharge from the court, to answer contingent expenses, and the balance then in the hands of the trade assignee shall be paid over to the bankrupt.

And we do hereby further resolve, that upon the bankrupt's estate and effects being so delivered to him as aforesaid, the said *G. M.* shall give to the creditors' assignee his acceptance at three months for the sum of £—, to be held by the creditors' assignee as a security for the manufactured stock to be so delivered to the bankrupt, such acceptance to be returned by the said assignee to the said *G. M.* and cancelled, on payment of the first instalment.

No. 77 c.

Another Form of Resolution, under Sect. 110 of "The Bankruptcy Act, 1861" (where the Creditors, in consideration of Payment in full at stated Periods, leave the Use and Possession of and Property in the Bankrupt's Real and Personal Estate to the Bankrupt).

"The Bankruptcy Act, 1861."

In the matter of *H. T.*, of —, a bankrupt.

We, the undersigned, being a majority in value representing three-fourths in value of the creditors present at this adjourned meeting, do resolve that the proceedings in bankruptcy be suspended, and that the estate and effects of the said bankrupt shall be wound up and administered in manner following; that is to say, that the said *H. T.* shall execute a deed, covenanting to pay the amount of his several debts by three equal instalments of — in the pound; the first instalment to be payable on the — day of —, 186—; the second instalment on the — day of —, 186—; and the third instalment on the — day of —, 186—; and that the said *H. T.* shall have the full use and possession of and property in his real and personal estate, to enable him to perform his said covenant.

B. A. 1861,
sect. 110.

No. 78.

Memorandum of Resolution of Creditors under Sect. 185, Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

We, the undersigned, whose names are written in the schedule hereto, being three-fourths in number and value of the creditors of the said bankrupt present or represented at the first meeting of the creditors of the said bankrupt this day held, being of opinion that it will be beneficial for the creditors of the said bankrupt that all further proceedings, under an adjudication of bankruptcy made on the — day of —, 186—, against the said bankrupt, should be stayed, and that the estate of the said bankrupt should be wound up under a deed of arrangement, do hereby resolve that the estate of said bankrupt ought to be and shall be (if the court shall think fit) wound up in accordance with the provisions of a deed of arrangement to be made between the said bankrupt of the first part, — of — of the second part, and ourselves, the respective undersigned, and all other the creditors of the said bankrupt of the third part, and approved of by or on behalf of us the undersigned and all other the creditors of the said bankrupt, and that in the event of such deed of arrangement becoming binding on all the creditors of the said bankrupt under the 187th section of "The Bank-

B. A. 1861,
sect. 185.

ruptcy Act, 1861," we, the undersigned, will accept in manner provided for by such deed the payment of our respective debts due to us from the said bankrupt; and do hereby further resolve that as soon as this resolution shall have been duly reported to the court, application shall be made to the court by Mr. —, that the proceedings in the said bankruptcy be stayed for such period as the court shall think fit.

SCHEDULE referred to.

		Assent.	Dissent.

No. 79.

Report of Registrar.

Court of Bankruptcy, London, Basinghall-street.

The — day of —, 186—.

In the matter of —, a bankrupt.

B. A. 1861,
sect. 186.

I hereby report that the above resolutions were duly come to by three-fourths in number and value of the creditors present or represented at the first meeting of creditors held after adjudication, that is to say, on the — day of —, in manner in "The Bankruptcy Act, 1861," provided, and that I appointed the — day of —, 186—, at — o'clock in the — noon, for an application to be made to the court that the proceedings in bankruptcy be stayed in the terms of the said resolution.

—, Registrar.

No. 80.

Order to stay Proceedings.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of —, a bankrupt.

B. A. 1861,
sect. 185.

Upon the application of Mr. —, the solicitor for Mr. —, the creditors' assignee, and upon reading the resolution of the creditors resolved upon at the meeting of the creditors held on the — day of —, and the report of the registrar thereupon, and no creditor appearing in opposition thereto, and upon reading the affidavit of —: This court doth find that the said resolution was duly carried, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, and doth confirm the said resolution and doth order accordingly. And it is ordered that all further proceedings in the bankruptcy of the above-named — be and the same are hereby stayed until the — day of —.

—, Commissioner.

No. 81.

Certificate of Official Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of —, a bankrupt.

I, the undersigned, being the official assignee of the estate and effects of the above-named bankrupt, do hereby certify that I have examined the deed of arrangement herein made between the said bankrupt and his creditors, with the list of creditors annexed to the affidavit of the said bankrupt, sworn the — day of —, and filed with the proceedings, and that it thereby appears that such deed has been executed by

upwards of three-fourths in number and value of all the creditors of the said bankrupt, as appears by the said list.

Given under my hand this — day of —, 186—.

—, Official Assignee.

Exhibited this — day of —.

—, Commissioner.

No. 82.

Order to confirm and register Deed.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London, Basinghall-street.

The — day of —, 186—.

In the matter of —, a bankrupt.

Whereas, at a meeting held under this bankruptcy on the — day of —, pursuant to due notice given in the London Gazette, it was resolved by three-fourths in number and value of the creditors then present or duly represented, that an offer then made by the bankrupt for the payment of the debts owing by him, was calculated to benefit the general body of the creditors under his estate and should be carried into effect, and that upon a proper deed of arrangement being duly executed the bankruptcy ought to be annulled. And whereas the said resolution was duly reported to the court and confirmed by the commissioner acting in the matter, and it was thereupon ordered that the proceedings in the said bankruptcy should be stayed until this day; and whereas on the — day of — the said bankrupt duly produced to the court a deed of arrangement, dated the — day of —, and made between the said bankrupt of the first part, and — of — of the second part, and the several persons whose names and seals are in the schedule thereunto set and affixed being respectively creditors of the said bankrupt, and all other the creditors of the said bankrupt of the third part: Now I, the said commissioner acting in this matter, upon hearing Mr. —, solicitor for the said bankrupt, and upon reading the affidavit of —, and the notice thereto annexed, and the affidavit of the said bankrupt filed in this matter on the — day of —, and the list of creditors thereunto annexed, and upon reading the certificate of the official assignee, am fully satisfied that the said deed has been duly executed by the said bankrupt and by the said —, the trustee under the said deed, and by three-fourths in number and value of all the creditors of the said bankrupt, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, and do declare the complete execution thereof and direct the same to be registered by the chief registrar of this court forthwith.

B. A. 1861,
sect. 187.

—, Commissioner.

No. 83.

Order to annul Adjudication.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—Whereas at a meeting held under this bankruptcy on the — day of —, pursuant to due notice given in the Gazette, it was resolved by three-fourths in number and value of the creditors then present or duly represented at the said meeting, that an offer then made by the bankrupt for payment of the debts owing by him was calculated to benefit the general body of the creditors under the estate, and should be carried out, and that, upon a proper deed of arrangement being duly executed, the bankruptcy ought be annulled; and whereas the said resolution was duly reported to the court, and confirmed by the commissioner acting in the matter, and it was thereupon ordered, that the proceedings in the said bankruptcy should be stayed for one month; and whereas the proceedings were further stayed by order of the said court for a further term of fourteen days; and whereas on the 26th day of March, the said bankrupt duly produced to the court a deed of composition and release, dated the 28th day of February, 1861, and made between the said —, the said bankrupt, of the one part, and the several persons and partnership firms, whose names are in the schedule thereunto set and affixed, being respectively creditors in their own right, or in copartnership with the said —, of the other part: Now I, the said com-

B. A. 1861,
sect. 187.

missioner, acting in the matter, having considered the same, and examined the said bankrupt, and having considered such proposal, and being satisfied that the said deed has been duly executed by the said —, and by three-fourths in number and value of the creditors of the said —, and that its terms are reasonable, and calculated to benefit the general body of the creditors under the estate, and that the composition of — in the pound, thereby agreed to be received by the said creditors of the said —, in discharge of their said debts, has been duly paid in cash to the said creditors who have executed the said deed, do declare the complete execution of the said deed, and direct the same to be registered by the chief registrar forthwith. And I do further order that the said bankruptcy be and the same is hereby annulled.

—, Commissioner.

No. 84.

Notice in Gazette of Bankruptcy having been annulled.

B. A. 1861,
sect. 191.

Whereas a petition for adjudication of bankruptcy was filed on the — day of —, one thousand eight hundred and sixty —, against *A. B.*, of —, under which he was adjudicated a bankrupt.

This is to give notice that the said adjudication was by order of the court of bankruptcy, bearing date the — day of —, one thousand eight hundred and sixty —, annulled.

No. 85.

Memorandum of Rejection of Creditors' Assignees by Court.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

B. A. 1861,
sect. 116.

Memorandum.—That on the — day of —, 186—, being the day appointed, pursuant to notice in the London Gazette, for the choice of assignees under the petition for adjudication of bankruptcy filed and now in prosecution against the said *A. B.*, the majority in value of the creditors present chose *L. M.*, of —, and *O. P.*, of —, to be such assignees. But as it appears to me, the commissioner acting in prosecution of the said petition, that the said *L. M.* and *O. P.* are unfit to be such assignees, on the ground that [*here state the ground*] I do hereby reject them, and order a new choice of another assignee [*or other assignees*] to be forthwith made.

H. P., Registrar.

E. W., Commissioner.

No. 86.

Bond by Creditors' Assignee.

B. A. 1861,
sect. 122.

Know all men by these presents, that I, *C. D.*, of —, am held and firmly bound to —, a registrar of the court of bankruptcy, in the penal sum of [*double the amount of the security*], to be paid to him or his certain attorney, or successors, for which payment to be well and faithfully made I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal.

Dated this — day of —, 186—.

Whereas, on the — day of —, 186—, a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy, London, against —, of —, under which he was on the same day duly adjudicated bankrupt; and whereas, pursuant to notice for that purpose in the London Gazette, the first meeting of creditors under the said bankruptcy was duly held at the said court of bankruptcy, on the — day of — instant, and at such first meeting on the said day the said *C. D.* was duly chosen creditors' assignee by the majority in value of the creditors then present, and who had proved their debts, which choice was thereafter duly confirmed by the court; and whereas the said creditors then and there determined that the said *C. D.* should give security, and execute a bond to a registrar of the said court in the penal sum of £—: Now, therefore, the condition of the above-written bond or obligation is such,

that if the said *C. D.* shall well and truly perform and fulfil all the duties required of him as the creditors' assignee of the estate of the said *C. D.*, by the statutes now in force relating to bankrupts, or by any general rule or order made or hereafter to be made on such statutes, and shall well and faithfully manage and to the best of his power realise and recover the estate belonging to the said bankrupt, and convert the same into money, and shall pay all monies not necessarily retained for current expenses, all exchequer bills, India bonds, and all other public securities, and other bills, notes, and negotiable instruments in manner required by sect. 127 of "The Bankruptcy Act, 1861," and shall duly pass his accounts in manner provided by sect. 129 of the said statutes, then the above obligation to be void, otherwise to be and remain of full force and effect.

Signed, sealed and delivered by the
above-bounden *C. D.* in the pre-
sence of *G. H.* } *C. D.*

No. 87.

Appointment of a Solicitor by a Creditors' Assignee.
"The Bankruptcy Act, 1861."

Court of Bankruptcy, London.

In the matter of *A. B.*, of —, bankrupt.

I, *C. D.* [*or we C. D. and E. F.*] the undersigned, having been duly appointed assignee [*or assignees*] of the estate and effects of the said *A. B.*, do hereby appoint you *G. H.* to be the solicitor to act in the matter of bankruptcy.

E. W., Registrar.

C. D.
E. F.

No. 88.

Account rendered to a Creditors' Assignee by Official Assignee.

No. 1.

London Court of Bankruptcy, Basinghall-Street, E.C.

London, — day of —, 186—.

B. A. 1861,
sect. 118.

Estate of *A. B.*, of —.

ACCOUNT OF BANKRUPT'S ESTATE AS FURNISHED BY HIM.

Dr.

Cr.

	£ s. d.		£ s. d.
Creditors unsecured :		Book debts, good	
		" " doubtful	
		" " bad	
Ditto secured :		Property :	
Liabilities :		Ditto with creditors :	

No. 2.

ACCOUNT OF MONIES RECEIVED AND PAID BY H. H S., OFFICIAL ASSIGNEE.

Dr.

Cr.

	£ s. d.		£ s. d.

ADDITIONAL FORMS.

No. 3.

LIST OF CREDITORS WHO HAVE PROVED THEIR DEBTS.

Name and Address.	Amount.
	£ s. d.

No. 89.

Petition by Creditors for the Removal of a Creditors' Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

To the Hon. Commissioner —.

B. A. 1861,
sect. 124.

The petition of the undersigned, representing one-fourth in value of the creditors who have proved debts against the estate and effects of the said bankrupt,

Showeth,—

That C. D., of —, was on the — day of —, 186—, duly chosen assignee of the estate and effects of the said bankrupt, and accepted the choice, and the choice was duly confirmed by the court.

That the said C. D. *[here state clearly and separately the matter of complaint]*.

Your petitioners, therefore, pray that the said *C. D.* may be removed from being assignee under the said bankruptcy, and that the court will appoint a meeting of creditors for the election of a creditors' assignee or assignees in the place of the said *C. D.*

(Signed) *E. F.*
G. H.

No. 90.

Order for Meeting to elect a new Assignee in the place of an Assignee who has died or resigned, or become Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

B. A. 1861,
sect. 124.

Whereas *C. D.*, of —, who was duly chosen creditors' assignee of the estate and effects of the said bankrupt, has since such choice died [*or has tendered his resignation as such assignee, and such resignation has been duly accepted by the creditors, or has become bankrupt*] and *E. F.*, a creditor of the said *A. B.*, who has proved his debt, has applied to me that a meeting of creditors may be appointed for the choice of a new assignee in the place of the said *C. D.*: Now I do order that a meeting of creditors be held at —, on the — day of —, 186—, for the purpose of such choice.

W. S., Registrar.

X. Y., Commissioner.

No. 91.

Another Form of Order for Removal of a Creditors' Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

B. A. 1861,
sect. 124.

Whereas *G. H.* and *K. L.*, being a majority in number and value of the creditors of the said bankrupt who have proved debts, did, on the — day of —, 186—, prefer unto this court a petition, that *C. D.*, of —, who had been chosen creditors' assignee of the estate and effects of the said bankrupt, might be removed from being such assignee, and that the court would appoint a meeting of creditors for the election of a

new creditors' assignee in the place of the said *C. D.*: Now, upon reading the said petition and the affidavits filed in support thereof, and upon hearing Mr. — of counsel [*or* solicitor] for the said petitioners, and Mr. — of counsel [*or* solicitor] for the said *C. D.* [*or* and the said *C. D.* not appearing, nor any one on his behalf, although he was duly served with the said petition], I do order that the said *C. D.* be removed, and I do hereby remove him from his office of creditors' assignee in the estate and effects of the said bankrupt, and I do order that a meeting of creditors be held at — on the — day of — 186—, for the purpose of choosing a creditors' assignee in the place of the said *C. D.*

P. Q., Registrar.

G. H., Commissioner.

No. 91 a.

Another Form for Removal of a Creditors' Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *P. M.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon the motion of Mr. *S.* of counsel for Messrs. *J. W.* and Son, Mr. *P. E.* and other creditors of the above-named bankrupt, made this day, that *J. W. B.*, of —, one of the creditors' assignees under the bankruptcy, should be removed: Now, upon learning what was alleged by Mr. *S.* in support of such motion, and reading the affidavit of the said *P. E.*, filed with these proceedings, and the letters of Messrs. *H.* and *L.*, marked B and C, also filed with these proceedings, and upon hearing Mr. *D.* of counsel for the said *J. W. B.*, and Mr. *B.* of counsel for *E. V. C.*, the other creditors' assignee under the bankruptcy; and it appearing to the court that it would be for the benefit of the estate that the said *J. W. B.*, as one of such creditors' assignees, should not continue to have the management and administration of the bankrupt's estate: It is ordered that the said *J. W. B.* be, and he is hereby, removed from his office as such creditors' assignee as aforesaid. And it is further ordered that the said *J. W. B.* do forthwith transfer or pay over to the said *E. V. C.*, as the remaining creditors' assignee, all monies in the hands of Messrs. *R. & Co.*, belonging to the estate of the said bankrupt, and standing in the joint names of the said *J. W. B.* and *E. V. C.* And it is further ordered that the costs of the said creditors moving, and of the said *E. V. C.*, be paid, when taxed, out of the estate and effects of the said bankrupt.

B. A. 1861,
sect. 124.

B. A. 1861,
sect. 139.

E. H., Commissioner.

No. 92.

Notice in Gazette for Meeting.

A meeting of the creditors of *A. B.*, of —, a bankrupt, will be held at the court of bankruptcy, Basinghall-street, London, on the — day of —, 186—, before a registrar of the said court, when and where the creditors of the said bankrupt, who have proved their debts, are to attend, in order to choose one or more assignee or assignees of the said bankrupt's estate and effects, in the room of *C. J.*, late one of the assignees, who hath been discharged from being assignee by an order of the court of bankruptcy [*or* who hath lately resigned, *or* died, *or* who hath lately become bankrupt].

No. 93.

Notice to Creditors' Assignee to attend Audit.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London, E. C.

Re —.

The — day of —, 186—.

SIR,—Take notice that, under the 129th section of "The Bankruptcy Act, 1861," you, as creditors' assignee of the estate and effects of the above-named bankrupt, are required at the end of three months from and after your appointment, and thenceforth at the expiration of every succeeding three months, to render to the official assignee, in the presence of the registrar, a debtor and creditor account of all sums received

and paid on account of the bankrupt or his estate, verified on oath as a full, true and faithful account of your receipts and payments as such creditors' assignee; and that the registrar has appointed the — day of — next, at the court of bankruptcy, in Basinghall-street, for you to render such account, and for the examination of the vouchers and books of account in your possession, together with your bankers' pass book, which must also be produced.

I am, sir, yours obediently,
J. C., Messenger.

To —, the creditors' assignee of the estate and effects of the above-named bankrupt.

Memorandum.—If you have not received or paid any monies on account of the estate, you will please make the inclosed affidavit before a master extraordinary in chancery, and return it to me; and, having done so, you need not attend the appointment.

—
No. 94.

Affidavit to Creditors' Assignee that he has not received or paid any Monies on account of Estate.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of A. B., of —, a bankrupt.

C. D., of —, maketh oath and saith that he, this deponent, as creditors' assignee of the estate and effects of the above-named bankrupt, hath neither received nor paid any monies on account of the estate.

Sworn at —, in the —, this — day of —, 186—.

Before me —.

—
No. 95.

Affidavit to be made and Account rendered by Creditors' Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of A. B., of —, a bankrupt.

C. D., of —, maketh oath and saith that he, this deponent, was on the — day of —, 186—, appointed creditors' assignee of the estate and effects of the above-named bankrupt, and that as such assignee he has conducted the realization of the said estate; that the accounts hereto annexed, containing — [*refer here to any prior account filed by deponent*] sheets of paper, the first sheet whereof is marked with the letter A, is true, and such account contains entries of every sum of money received by deponent on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by deponent have been so made by him.

C. D.

Sworn at —, in the — of —, this — day —, 186—.

Before me —,
Registrar.

Exhibited to me this — day of —, 186—.

—
No. 96.

Petition of an Equitable Mortgagee on Sale of the Mortgaged Premises.

In the Court of Bankruptcy.

In the matter of A. B., of —, a bankrupt.

To the Honorable Mr. Commissioner —.

The humble petition of C. D., of —,

Showeth,—

That in or about the month of — the said A. B. applied to your petitioner and requested of him a loan of £—, and your petitioner consented thereto upon having the repayment of the same, together with interest thereon, secured by a deposit of the title deeds of an estate situate at [*describe the estate*], the property of the said A. B.

That on the — day of — your petitioner advanced and paid to the said *A. B.* the said sum of £ —, and at the same time the said *A. B.* delivered over to and deposited with your petitioner the title deeds hereinafter mentioned relating to the said estate, and signed a memorandum in writing, which is in the words and figures following, that is to say [*copy the memorandum*].

That the said sum of £ —, or any part thereof, or any interest due in respect thereof, hath not at any time been paid to your petitioner, but the whole of the said sum of £ —, together with a considerable arrear of interest thereon, was, at the time of filing the petition for adjudication hereinafter mentioned, and still is, due and owing to your petitioner on the security of the said estate so made to your petitioner as aforesaid.

That a petition for adjudication of bankruptcy was filed against the said *A. B.* on the — day of —, under which he hath been duly found and declared a bankrupt, and *L. K.*, of —, hath been appointed the official assignee, and *L. M.*, of —, and *O. P.*, of —, have been chosen and appointed the creditors' assignees of the estate and effects of the said bankrupt.

Your petitioner humbly prays that your honor will be pleased to order that an account be taken of what is due and owing to your petitioner for principal money and interest upon his said security, and that the estate and premises mentioned or comprised in the said memorandum of the — day of — may be sold by the said assignees *L. M.* and *O. P.*, and that the said *L. K.* and the said bankrupt and all other necessary parties may be ordered to concur in the conveyance thereof, and that out of the proceeds of the sale of the said estate and premises the costs of and incidental to the said sale and of all parties to this application may be paid, and that the residue of the proceeds of the said sale, or so much thereof as shall be sufficient for that purpose, may be paid to your petitioner in satisfaction of what shall be found due to him upon the taking the said account, or that your honor will make such other order in the premises as to your honor shall seem meet.

And your petitioner, &c.

No. 97.

Form of Order on taking Mortgagee's Account and a Sale of Mortgage.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Memorandum.—That a sitting was this day held before me, the undersigned commissioner acting in the prosecution of the said petition, upon the application of —, claiming to be an equitable mortgagee of part of the said — estate, and I, the said commissioner, in the presence of the solicitor for the said — and of the solicitor for the assignees, have proceeded to inquire whether the said — is such mortgagee as aforesaid, and for what consideration, and under what circumstances, and upon the production hereinafter mentioned I find that by a — dated the — day of —, and made between — of —, and — of —, in consideration of the sum of — therein stated to be due to the said — from the said bankrupt upon [*an account*], and of the further sum of — [*being interest, &c.*], the said bankrupt did convey, &c. the [*insert short description of property*]. And I the said — do therefore find that the said — is equitable mortgagee of the said —, and no objection appearing to his title as such mortgagee, I have proceeded to take an account of the principal money and interest due upon the said mortgage, and having taken the deposition on oath of the said —, which is now filed with the proceedings, I the said — do find that there is now due to the said — for principal money the sum of —, and for interest thereupon to the date of the said petition the sum of —, making together the sum of —, and I the said — do hereby order that the said — be sold by public auction by —, at —, in —, on the — day of —, 186—, at — o'clock, and that such sale be conducted by the assignees of the said bankrupt's estate, and that notice of the said sale be given in the London Gazette once, and twice in the newspapers respectively.

B. L. C. A. 1849,
sect. 184.

[*G. O.*, 19th Oct.
1852, rr. 55—58.]

No. 98.

Order to pay One Year's Parochial Taxes.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Registrar —.

B. A. 1861,
sect. 156.

I, the undersigned registrar of the said court, upon the application of the assignee to the estate and effects of the said bankrupt, do order that payment of all such parochial rates as may have become due during the twelve months immediately preceding the time of the said bankrupt being adjudicated a bankrupt be forthwith made out of the estate and effects of the said bankrupt.

C. D., Registrar.

No. 99.

Order for the Payment of a Sum of Money, and delivering up a Bond to a Friendly Society.

Court of Bankruptcy, &c.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.B. L. C. A. 1849,
sect. 167.

Whereas it appears to me, —, esquire, one of the commissioners of her majesty's court of bankruptcy acting in prosecution of a petition for adjudication of bankruptcy against the said *A. B.*,* on the oath of *J. T.*, of —, &c., that the said bankrupt, at the time he became bankrupt, was treasurer to a certain friendly society called the —, the articles or conditions whereof have been duly enrolled; and that the said bankrupt at the time he so became a bankrupt was, as such treasurer as aforesaid, entrusted with the money and other property belonging thereto, and that the money of the said society in his hands at the time of his so becoming a bankrupt amounted to the sum of £—; and that he had also then in his possession a certain bond of one — for the sum of £— payable to the treasurer of the said society for their use: I, therefore, upon due proof thereof, and in pursuance of the authority vested in me by the statute in such case made and provided, do order *J. G.* and *C. J.*, the assignees under the said petition, within — days after demand made by the order of the said society, or the major part of them assembled, to deliver to the said society or some person or persons by them duly authorized to receive the same the said bond in the above deposition mentioned, and also to pay out of the effects of the said bankrupt coming to their hands the said sum of £— so remaining due and owing to the said society from the said bankrupt as such treasurer at the time he became bankrupt.

G. H., Commissioner.

No. 100.

*Order for Payment of Wages to a Servant, Clerk, Labourer or Workman of the Bankrupt.*B. L. C. A. 1849,
ss. 168, 169.

This form is the same as the preceding one to the asterisk, then] on the oath of *J. T.*, late clerk [or servant, labourer or workman] to the said bankrupt, that the said bankrupt was indebted to the said *J. T.* in the sum of £—, being — months wages or salary [or being for labour or wages] due to the said *J. T.* from the said bankrupt at the date of the said petition: I hereby order you to pay the same out of the estate of the said bankrupt.

To — and —, assignees of the estate }
and effects of the said bankrupt. }

—, Commissioner.

No. 101.

*Order to pay Part of Apprentices Fee.*B. L. C. A. 1849,
sect. 170.

The same as in the last form but one to the asterisk, then] on the oath of *J. T.*, of —, &c., that by indenture bearing date the — day of —, 186—, the said *J. T.* was bound apprentice to the said bankrupt, and that the sum of £— was paid to the said bankrupt by or on behalf of the said *J. T.* as an apprentice fee: I, therefore, upon due

proof thereof, and taking into consideration the time that the said *J. T.* hath resided with the said bankrupt, do hereby order you to pay the sum of £ — to the said — out of the estate and effects of the said bankrupt.

To — the official assignee of the estate }
and effects of the said bankrupt. }

—, Commissioner.

No. 102.

Order for Sale of Goods in the reputed Ownership of the Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, a bankrupt.

Before Mr. Commissioner —.

The — day of —, 186—.

Whereas the above-named *A. B.* was adjudged bankrupt by this court upon a petition for adjudication of bankruptcy duly filed; and whereas *L. M.* and *O. P.* are the assignees duly appointed and chosen of the estate and effects of the said bankrupt: Now, upon the application of *J. K.* the solicitor of the said assignees, and reading the examination of *K. L.* taken before me in this matter on the — day of — instant, the court doth find that at the time when the same *A. B.* became bankrupt, he had, by the consent and permission of *N. R.* (who claims to be the true owner thereof), in the possession, order and disposition of him the said *A. B.* [*here enumerate the specific goods and chattels the subject of the order*], whereof he the said *A. B.* was the reputed owner: And the court doth hereby order the said [*enumerating the goods and chattels as before*] to be sold and disposed by the said assignees for the benefit of the creditors of the said *A. B.*

B. L. C. A. 1849,
sect. 125.

—, Commissioner.

No. 103.

Order for Transfer of Stock to which the Bankrupt is entitled.

It appearing to me, *E. H.*, esquire, one of her majesty's commissioners acting in the prosecution of the said petition for adjudication of bankruptcy, that the said *A. B.* is entitled to the said sum of £ — £3 per Cent. Consolidated Bank Annuities, and that the same is now standing in the name of — in the books kept at the bank of England for entering transfers of such annuities; and it is also appearing to me that the act [*or consent*] of *C. D.*, of &c., and *E. F.*, of &c., is necessary for effectually transferring the same into the name of the said official assignee: I do hereby order you the said *C. D.* and *E. F.*, and each of you, on or before the — day of — next, to consent to or concur in the transfer of the same into the name of *G. H.*, assignee of the estate and effects of the said bankrupt, and not to pay any dividends henceforth to become due in respect of the same to any person, save *G. H.*, assignee.

B. L. C. A. 1849,
sect. 128.

[*G. O.*, 19th Oct.
1852, rr. 139, 147.]

E. H., Commissioner.

To *C. D.*, of &c., and *E. F.*, of &c.

No. 104.

Summons to Debtor to the Estate.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

By virtue of a petition for adjudication of bankruptcy, filed on the — day of —, 186—, against *A. B.*, of —, these are to will and require you, to whom this summons is directed, personally to be and appear before me, the undersigned, one of the commissioners of her majesty's court of bankruptcy, acting in the prosecution of the said petition, on — the — day of —, in the year of our Lord one thousand eight hundred and —, at the hour of — o'clock in the — noon precisely, at the court of bankruptcy, in Basinghall-street, London, then and there to be examined by me, by virtue of the said petition and the statute in such case made and provided: And you are hereby required to produce, at the time and place above mentioned, all ledgers

B. L. C. A. 1849,
sect. 120.

and books of account, invoices, statements of account, letters, papers and documents of every kind, in any matter relating to your dealings and transactions with the said bankrupt, and hereof you are not to fail at your peril.

Given under my hand, this — day of —, 186—.

If the sum of £ — stated by the bankrupt to be due by you to this estate be due, and be paid to Mr. —, assignee, No. —, — street, on or before the — day of —, this summons may be discharged.

G. H., Commissioner.

To Mr. —, of —.

No. 105.

Warrant of Committal.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the matter of A. B., a bankrupt.

Before Mr. Commissioner —.

B. L. C. A. 1849,
sect. 120.

I, E. H., esquire, the commissioner acting in the prosecution of the petition in bankruptcy filed against the above-named A. B., under which he has been declared a bankrupt, and which petition is now in prosecution and full force, having before me W. S. at a sitting of the court, duly holden before me in the above matter, the said W. S. was required to be sworn and examined, touching the discovery of the bankrupt's estate and effects, and a debt alleged by the bankrupt on his examination on oath before me to be due from the said W. S. to the bankrupt or his estate, and the said W. S. having refused to be sworn or to answer any lawful question that might be put by the court to him, and not having shown any lawful objection to me why the said W. S. should not be sworn or answer any lawful question that might be put to him by the court, and not having any lawful objection allowed by the court: These are therefore to will, require and authorize you, immediately on receipt hereof, to take into your custody the body of the said W. S. and him safely to convey to the — prison, and him there to deliver to the keeper of the said prison, together with this warrant; and the keeper of the said prison is hereby required and authorized to receive the said W. S. into his custody, and him safely to keep and detain without bail or mainprize, till he shall submit himself before me to be sworn, and full answers make to the satisfaction of this honorable court to all such lawful questions as shall be put to him by the court, and sign and subscribe his examination when taken down; and for so doing this shall be your sufficient warrant.

Given under my hand and seal of the court of bankruptcy, Basinghall-street, in the city of London, this — day of —, 186—.

G. H.

To J. J. my messenger, to —, to the keeper of the prison, or to whom else it may concern.

No. 106.

Memorandum of the Committal.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of A. B., of —.

Before Mr. Commissioner —.

W. S. was called upon to be sworn, in order that he might be examined touching the discovery of the estate and effects of the bankrupt, and a debt alleged by the bankrupt to be due from him to the bankrupt's estate: whereupon after being warned, and his having refused to be sworn or examined or to answer any lawful questions that might be put to him, not having any lawful objection thereto, I have ordered the said W. S. into custody, and to be committed to the — prison for refusing to be so sworn or examined as aforesaid, and I have issued my warrant accordingly.

G. H., Commissioner.

No. 107.

Examination of Debtor.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, against whom a petition of adjudication of bankruptcy was filed on the — day of —, 186—.

Before Mr. —.

G. H., of —, being sworn and examined at the time and place above mentioned, B. L. C. A. 1849, sect. 123.
upon his oath saith:—

No. 108.

Order vesting Copyholds in a Purchaser.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon the application of — of counsel for the creditors' assignees, and upon B. A. 1861, sect. 114.
reading the affidavit of *A. B.*, of —, auctioneer, sworn the — day of —, 186—, and filed with the proceedings; and it appearing that the above-named bankrupt was, at the date of the adjudication of bankruptcy made against him, seised or otherwise entitled to four enclosures of arable land situate at —, in the county of —, containing ten acres or thereabouts, held of the manor of —, and that at a sale by auction held on the — day of — last, *T. R.*, of —, was the highest bidder for and was declared the purchaser of the said copyhold premises, at and for the price of £—, subject to the approbation of this court; and it further appearing that the said sum of £— is a fair and adequate price for the purchase of the said copyhold premises, and that the said purchase is reasonable and advantageous to the estate of the said bankrupt, and ought to be carried into effect for the benefit of the creditors: It is ordered that the said offer of the said *T. R.* for the purchase of the said copyhold premises at and for the price of £— be accepted, and that upon payment by the said *T. R.* of the said sum of — to *S. S. H.* and another for all the creditors' assignees under the bankruptcy, all the estate and interest of the said bankrupt in the said copyhold premises shall be and the same are hereby vested in the said *T. R.* and his heirs and assignees absolutely pursuant to the 114th sect. of "The Bankruptcy Act, 1861," in that behalf.

J. B., Commissioner.

No. 109.

Order to sell Book Debts.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

The — day of —, 186—.

I, the undersigned, the commissioner of the said court, do, upon the application of B. A. 1861, sect. 137.
the assignee to the estate and effects of the said bankrupt, order that all the book debts due or growing due to the said bankrupt, and the books relating thereto, and the goodwill of his trade or business, shall be sold by auction [or tender or private contract] as soon as conveniently may be.

X. Y., Commissioner.

No. 110.

Summons to a Creditors' Assignee to show Cause why he should not be committed for Neglect of Duty.

"The Bankruptcy Act, 1861."

By virtue of a petition for adjudication of bankruptcy filed in her majesty's court of bankruptcy against *A. B.*, of —.

These are to will and require you to whom this warrant is directed personally to be B. L. C. A. 1849, sect. 151.
and appear before *E. H.*, esq., the commissioner acting in the prosecution of the said

petition, on — the — day of —, 186—, at — of the clock in the — noon precisely, at the court of bankruptcy, in Basinghall-street, London, then and there to be examined by virtue of the statute in such case made and provided, and show cause why you wilfully omit and neglect your duty as creditors' assignee in refusing to sign the necessary orders for payment of the solicitor's costs, pursuant to the master's allocatur; and also to show cause why you should not personally pay the costs of and occasioned by this application, or why you should not be committed to prison for contempt, in refusing to sign such orders. And hereof you are not to fail at your peril.

Given under my hand, this — day of —, 186—. To C. D.

W. H., Registrar.

—
No. 111.

Report by Official Assignee of Neglect of Creditors' Assignee to pay Monies into Bank.
Basinghall-street, E.C., December 10th, 1863.
Re A. B.

SIR,—I have to submit to your honor's notice the following facts in respect to the above-named bankrupt:—

On the — day of —, 186—, A. B. was declared bankrupt on the petition of C. D., who became sole creditors' assignee by your honor's appointment on the — day of —, 186—. He voted on the choice for £— along with — other creditors, whose debts amounted to £—.

The bankrupt's stock and furniture, according to the balance sheet, amounted to £—, which I believe were realized by C. D. in —, 186—.

The creditors' assignee was duly summoned to attend an audit meeting on the — day of —, 186—, but did not do so, nor did he file any affidavit that he had not received any money.

I beg to submit these facts to your honor, and to ask whether he should not be summoned, under the acts 12 & 13 Vict. c. 106, s. 265, and 24 & 25 Vict. c. 134, s. 175, to show cause why he has not paid into the bank of England the proceeds of the stock and furniture received by him, and also to show cause why he should not pay the penalty under the acts above named for not having done so.

I have the honor to remain,

Your obedient servant,

To Mr. Commissioner —.

H. H. S., Official Assignee of A. B.

Exhibited to me the — day of —, 186—.

E. G., Commissioner.

—
No. 112.

Rule to Account and Pay over.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of A. B., a bankrupt.

Before Mr. Commissioner —.

— day of —, 186—.

Upon the application of Messrs. — of —, creditors of the above-named bankrupt, who have proved their debt in the bankruptcy, and upon reading the report, dated this day, of H. H. S., the official assignee in the bankruptcy, and which report is filed with the proceedings in the bankruptcy, and it appearing to the court that the adjudication of bankruptcy was made on the — day of —, 186—, and that C. D., of —, was, on the — day of —, 186—, appointed and still remains the sole creditors' assignee of the estate and effects of the above-named bankrupt, and it also appearing from the statement of accounts filed by the bankrupt that his stock in trade, furniture and fixtures given up to the said creditors' assignee were estimated to be worth £—, and it also appearing that the said C. D. has not up to the present time rendered to the official assignee an account on oath of all sums received and paid by him on account of the bankrupt or his estate as such creditors' assignee, pursuant to the requirements of the statute in that behalf; and further, that he the said creditors' assignee has not attended at the court to audit his accounts, although duly summoned

to attend an audit appointed to be held on the — day of —, 186—, I do order that the said *C. D.*, the said creditors' assignee, do show cause before this court on the — day of —, 186—, at — o'clock in the — noon, why he should not file an account of all sums received and paid by him as such creditors' assignee as aforesaid, and also why he should not pay into the bank of England, to the account of the accountant in bankruptcy, all monies which may have been received by him as such creditors' assignee; and also why he should not forfeit and pay interest, calculated at the rate of £20 per cent. by the year, upon all monies belonging to the bankrupt's estate, beyond the sum of £50, which he may have kept in his hands at any time during the space of one week: and I do further order that the said *C. D.* do show cause at the same time why he should not be removed from his said office of creditors' assignee, and pay the costs of and incidental to this application: and I do further order that a copy of this rule be served upon the said *C. D.* by *W. W.*, of —, as the solicitor for and on behalf of the said official assignee.

E. G., Commissioner.

No. 113.

Affidavit of Service of the Rule.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the matter of *A. B.*, of —, a bankrupt.

I, *W. T.*, clerk to *W. W. A.*, of —, solicitor, maketh oath and say that I did on the — day of —, 186—, serve *C. D.*, of —, with the rule hereunto annexed, marked B., by personal service upon him the said *C. D.* at his place of business aforesaid.

Sworn at —, in the —, }
this — day of —, 186—. }
Before me, *W. H.*, Registrar.

No. 114.

Order discharging Rule upon Assignee having paid Monies collected by him into Bank, with Costs to be paid by Assignee.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon cause being shown this day against the rule granted by the court on the 10th instant, and directed to *C. D.*, the creditors' assignee in the above bankruptcy, and upon hearing what was alleged by the said *C. D.*, and by Mr. *M.* on his behalf, and by Mr. *W.* on behalf of the official assignee, and it appearing that the said *C. D.* has this day delivered to *H. H. S.*, the official assignee, his accounts as creditors' assignee, and has also this day paid into the bank of England to the credit of the bankruptcy the sum of £—, being the balance which had been retained by him out of the proceeds of the estate realised by him, and the said *C. D.* undertaking at once to file his accounts, and also an affidavit showing the reason why the proceeds of the estate have been retained by him in hand so long, contrary to the statute: I do order that the said rule be allowed to be discharged if the said accounts and the said affidavit of the said *C. D.* be found satisfactory by the court; and I do further order that the said *C. D.* do pay to all parties their full costs of and incidental to the granting and hearing of the said rule, such costs to be taxed by the taxing master in case the parties differ respecting them.

E. G., Commissioner.

No. 115.

Summons to Assignees.

You are hereby required to attend me, —, esquire, being the commissioner authorized to proceed on a petition for adjudication of bankruptcy filed against *A. B.*, of — street, in the city of —, builder, dealer and chapman, on the — day of —, B. L. C. A. 1849, sect. 151.

at the hour of two o'clock in the afternoon, at the court of bankruptcy, Basinghall-street, and then and there to produce all such books, papers, deeds, writings and other documents relating to the estate and effects of the said bankrupt as are in your custody or possession, according to the statute in that case made and provided.

Given under my hand this — day of —, in the year of our Lord 186—.

To *J. G.* and *C. J.*, assignees of the
estate and effects of *A. B.*, a
bankrupt. }

— *E. H.*, Commissioner.

No. 116.

Warrant to apprehend Assignees.

Whereas a petition in bankruptcy hath been filed, and is now in prosecution against *A. B.*, of &c., under which petition *J. G.*, of &c., and *C. J.*, of &c., were duly chosen by the creditors and appointed assignees of the estate and effects of the said *A. B.*, and as such have become possessed of property of the said bankrupt to a large amount, and also divers books, papers, writings and other documents relating to the same; and thereupon I, —, being the commissioner authorized to proceed on the said petition, did issue my summons, bearing date the — day of —, directed to the said *J. G.* and *C. J.*, thereby requiring them [*set forth the summons*]; and which said summons was delivered to —, my messenger, to be served on the said *J. G.* and *C. J.*; and the said — having been previously sworn and examined by me, on his oath says, that the said summons was duly served upon the said *J. G.* and *C. J.*, on the — day of — last. And whereas the said *J. G.* and *C. J.* have not come before me according to the requisition of the said summons, nor have they made known to me at this sitting any lawful excuse or impediment for not appearing before me for the purpose aforesaid: These are therefore to require and authorize you to apprehend and take the said *J. G.* and *C. J.* and each of them, and to bring them before me on the — day of — next, at —, and to require them then and there to produce such books, papers, deeds, writings and other documents as are in their custody or possession, and in anywise relating to the said bankrupt's estate; and for so doing this shall be your sufficient warrant.

Given under my hand and the seal of the court, this — day of —, 186—.

To —, messenger, }
and his assistant. }

— *M. N.*, Commissioner.

No. 117.

Order to postpone Audit till Last Examination passed.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Upon reading the affidavit of *J. G.*, the creditors' assignee of the estate and effects of the said bankrupt, and upon hearing Mr. —, the solicitor for the said creditors' assignee, I do order that no audit of the said creditors' assignee's accounts do take place until the last examination of the said bankrupt, which has already been adjourned, shall be finally disposed of. And I further order, that a meeting be called, pursuant to the provisions of the said act, for the purpose of declaring a dividend, and then adjourned (if necessary) until the said accounts shall have been audited, and the said last examination finally disposed of.

— *G. K.*, Commissioner.

No. 118.

Memorandum of Adjournment of Last Examination.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the bankruptcy of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—The above-named bankrupt having duly surrendered to this court, pursuant to notice in the London Gazette, and submitted to be examined from time to

time, touching the discovery of his estate and effects, and in all things to conform himself according to the direction of the statute in such case made and provided, and this being a public sitting appointed for the said bankrupt to pass his last examination and make application for his discharge under "The Bankruptcy Act, 1861" (whereof and of the purport whereof the notice required in that behalf has been duly given), the said bankrupt came before me, the commissioner duly authorized to proceed in the prosecution of the said bankruptcy, at the time and place above mentioned, and upon the said bankrupt being examined, and upon hearing Mr. — for the said bankrupt, and Mr. — for the — assignee: It appeared to me, that —, whereupon I did adjourn the sitting for the said bankrupt to pass his last examination, and make application for his order of discharge until the — day of — next, at — o'clock in the — noon precisely.

—, Commissioner.

No. 119.

Petition by Bankrupt to enlarge the Time for Last Examination.

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

To the Honorable Mr. Commissioner —.

The humble petition of *A. B.*

Showeth,

That a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy against your petitioner, on the — day of —, by *C. D.*, of —. B. A. 1861, sect. 140.

That your petitioner was adjudicated and declared a bankrupt under the said petition, and by a summons under the seal of the said court, and by notice in the London Gazette of the — day of —, 186—, your petitioner was required to surrender himself to the commissioner acting in prosecution of the said petition to be examined by him, on the — day of —, at the court of bankruptcy, at eleven o'clock in the forenoon, touching the disclosure and — of his estate and effects, and on the — day of — your petitioner was, by such summons and notice, required to finish his examination under the said petition.

That your petitioner, on the — day of —, and before the filing the said petition, left this country and proceeded to —, for the purpose of effecting a sale of certain merchandise belonging to your petitioner.

That your petitioner first heard of the said adjudication on the — day of —, by seeing in a — newspaper an extract of the London Gazette of the — day of —, announcing that a petition for adjudication had been filed against your petitioner.

That your petitioner took immediate measures to return to this country to surrender himself to the said petition, and took his passage to this country by the —, bound from — to —, and arrived in —, by that vessel on the — day of —.

That your petitioner is desirous of surrendering himself to the commissioner acting in prosecution of the said petition, and submitting himself to be examined touching the disclosure and discovery of his estate and effects, and conforming himself to the acts of parliament made and now in force concerning bankrupts.

Your petitioner, therefore, humbly prays your honor that you will be pleased to order that your petitioner may be at liberty to surrender himself to the said petition, at a day or within a time to be for that purpose named, and that your petitioner may have a month's time for fully disclosing and discovering his estate and effects, and finishing his last examination under the said petition, or such further time as the court may think fit, and that the costs of the assignees and of your petitioner may be paid out of the estate of your petitioner in the said bankruptcy.

And your petitioner will ever pray, &c.

The petition must be supported by affidavit.

No. 120.

Order enlarging Time for Surrender.

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, a bankrupt.

Whereas the said *A. B.* having been duly adjudged and declared bankrupt, notice of such adjudication was published in the London Gazette on the — day of —, B. A. 1861, sect. 140.

186—, whereby the said bankrupt was required to surrender himself to this court, and to finish his examination on — the — day of —, 186—; and whereas *A. B.*, a solicitor of the court of bankruptcy, hath this day appeared before me on behalf of the said bankrupt, and represented to me that [*here state the reason for enlarging the time for surrender*], and thereupon prayed that I would enlarge the time specified in the said Gazette for the said bankrupt to surrender and to finish his examination, he the said solicitor having undertaken to pay the costs incident to this application and to such enlargement, such costs to be settled by this court: Now I do order, that the day so specified in the said London Gazette for the said bankrupt to surrender be enlarged to — day, the — day of — next, at — o'clock in the forenoon.

C. R., Registrar.

A. B., Commissioner.

No. 121.

Advertisement of Adjournment of, or Enlargement of Time for, Last Examination.

I, *E. H.*, one of her majesty's commissioners authorized to act under a petition for adjudication of bankruptcy, filed on the — day of —, 186—, against *A. B.*, of —, will sit on the — day of —, 186—, at — o'clock in the — noon precisely, at Basinghall-street, in the city of London, pursuant to adjournment [*or where time for surrender has been enlarged* pursuant to the order of the said commissioner made on petition, dated the — day of —, 186—], to take the last examination of the said bankrupt, and for the said bankrupt to make application for his discharge when and where he is required to surrender himself and make a full discovery and disclosure of his estate and effects, and finish his examination; and the creditors who have not already proved their debts are to come prepared to prove the same.

No. 122.

Summons to Bankrupt to attend Last Examination.

"The Bankruptcy Act, 1861."

Bankrupt's Summons.

B. L. C. A. 1849,
sect. 117.

Whereas a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy in London, on the — day of —, 186—, — you —; and you having been duly adjudged bankrupt, and the first meeting of your creditors having been duly held, are hereby summoned and required to surrender yourself to —, esquire, a commissioner of the said court, at a public sitting of the court, which the court has appointed to be held on the — day of —, 186—, at — o'clock in the — noon precisely, at the said court in Basinghall-street, in the city of London, for you the said bankrupt to pass your last examination, and also to make application for your order of discharge, of which sitting due notice will be given in the London Gazette: And you are hereby informed that at such sitting you will be required to submit yourself to be examined and to make a full and true discovery and disclosure of all your estate and effects, according to the directions of the statutes made and now in force concerning bankrupts: And you are further informed that the day appointed for the said sitting is the day limited for your surrender. And herein fail not at your peril.

Given under my hand and under the seal of the court this — day of —, 186—. —, Registrar.

To —, the above-named bankrupt.

No. 123.

Warrant to bring up Bankrupt.

"The Bankruptcy Act, 1861."

B. L. C. A. 1849,
sect. 112.

To the — prison or his deputy —, I the undersigned commissioner of her majesty's court of bankruptcy, authorized to act under a petition for adjudication of bankruptcy filed on the — day of —, 186—, against *A. B.*, of —, do hereby require you to bring the said *A. B.*, whom you have in your custody, before me on the — day of —, at — o'clock in the — noon precisely, at the court of bankruptcy, Basinghall-street, London, in order to be examined touching the discovery and disclosure of his estate and effects according to the directions of the act of parliament in that case made and provided.

Given under my hand and the seal of the court, this — day of —, 186—. —, Commissioner.

No. 124.

Memorandum of Non-Surrender of Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

Before Mr. Commissioner —.

In the bankruptcy of *A. B.*, of —.

Memorandum.—Be it remembered that I, —, esquire, the commissioner acting in the prosecution of the said bankruptcy, sat at the time and place above mentioned, pursuant to notice in the London Gazette, for the purpose of receiving the surrender of the said bankrupt, and of his making a full disclosure and discovery of his estate and effects, and passing his last examination; but the said bankrupt did not surrender himself, although I sat from the hour of — o'clock in the — noon until — o'clock in the afternoon, for the purpose of receiving such surrender.

—, Commissioner.

No. 125.

Deposition of Service of Summons to Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

In the bankruptcy of *A. B.*, of —.

The — day of —, 186—.

G. L., of —, London, one of the messengers of the court of bankruptcy, being sworn and examined the day and year and at the place aforesaid, upon his oath saith, that he this examinant did, on the — day of — last past, serve *A. B.*, the person against whom the petition for adjudication in bankruptcy now in prosecution hath been filed, with a true copy of the summons hereunto annexed, by delivering the same to and leaving it with a female servant of the said *A. B.* at his dwelling-house and usual place of abode in — street, in the city of London, and at the time showed her the original summons hereunto annexed. And this examinant further saith, that he hath since seen the said female servant, who informed this examinant that she had delivered the said copy to the said *A. B.*, which information this examinant believes to be true.

No. 126.

Memorandum of his Non-Attendance, and of granting Warrant.

"The Bankruptcy Act, 1861."

The Court of Bankruptcy, London.

In the matter of *A. B.*, of —, a bankrupt.

The — day of —, 186—.

Memorandum.—That on the — day of — instant, by virtue of a petition for adjudication in bankruptcy, filed in her majesty's court of bankruptcy, on the — day of —, 186—, against *A. B.*, of —, I, *E. H.*, the commissioner acting in prosecution of the said petition, by summons, dated the — day of — instant, and directed to the said *A. B.*, did will and require the said *A. B.* personally to be and appear before me, the said commissioner, on the — day of — instant, at — o'clock in the — noon of the same day, at the court of bankruptcy, to be examined by me, the said commissioner, by virtue of the said petition and of the statutes therein mentioned; and which said summons was afterwards, on the — day of — instant, as hath been proved to me, duly served upon the said *A. B.*: And this being the day so appointed by the said summons for the said *A. B.* personally to appear before me for the purpose aforesaid, I, the said commissioner, attended at the time and place in and by the said summons appointed for the purpose, amongst other things, of examining the said *A. B.*, and although I, the said commissioner, there continued to attend from thence until — o'clock in the afternoon, in expectation of the said *A. B.* appearing before me, for the purpose aforesaid, according to the exigency of the said summons; yet the said *A. B.*, having no lawful impediment made known to or allowed by me, hath not appeared before me, as by the said summons he was required, but therein has wholly

B. L. C. A. 1849,
sect. 117.

made default. Wherefore, by virtue of the petition aforesaid, and of the statutes in such case made and provided, I, the said commissioner, have this day granted my warrant, under my hand and seal, bearing date the day and year and at the place first aforesaid, directed to —, the messenger, and to —, his assistant, willing, requiring and authorizing them to arrest the said *A. B.*, by his body, and bring him before me, the said commissioner, at the place above mentioned, on —, the — day of — instant, in order to his being examined.

E. H., Commissioner.

No. 127.

Warrant to apprehend Bankrupt.

"The Bankruptcy Act, 1861."

B. L. C. A. 1849,
sect. 117.

Whereas a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy in London, on the — day of — 186—, against *A. B.*, of —, and the said *A. B.* hath been duly adjudged bankrupt thereunder.

And whereas I, *E. H.*, the commissioner acting in prosecution of the said petition, by summons dated the — day of — instant, and directed to the said *A. B.*, did will and require the said *A. B.* personally to be and appear before me the said commissioner on the — day of — instant, at — o'clock in the — noon of the same day, at the court of bankruptcy, to be examined by me the said commissioner, by virtue of the said petition and of the statutes therein mentioned: and which said summons was afterwards, on the — day of — instant, as hath been proved to me upon oath, duly served upon the said *A. B.* And whereas I, the said commissioner, attended at the time and place in and by the said summons, appointed for the purpose, amongst other things, of examining the said *A. B.*, and there continued to attend from thence until — o'clock in the afternoon of the same day, in expectation of the said *A. B.* appearing before me for the purpose aforesaid, according to the exigency of the said summons; yet the said *A. B.* having no lawful impediment made known to or allowed by me, hath not appeared before me, as by the said summons he was required, but therein has wholly made default. These are therefore to will, require and authorize you and every of you to whom this my warrant is directed, immediately upon receipt hereof, to arrest the said *A. B.* by his body, and bring him before me the said commissioner at the said court of bankruptcy on the — day of —, in order to his being examined as aforesaid, and for your so doing this shall be your sufficient warrant.

Given under my hand and the seal of the court this — day of — 186—.

E. H., Commissioner.

To — messenger and to — his assistant.

No. 128.

Warrant of Commitment of Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

B. L. C. A. 1849,
sect. 260.

Whereas a petition for adjudication in bankruptcy was filed on the — day of —, 186—, against *A. B.*, of —, and the said *A. B.* hath been duly adjudged a bankrupt thereunder: and whereas the said *A. B.* did, on the — day of —, 186—, surrender himself to me, *E. H.*, one of the commissioners of the said court, authorized to proceed in the prosecution of the said petition, in order to make a full disclosure of his estate and effects, but being sworn and examined, said he was not then prepared to make a full disclosure of his estate and effects, and prayed time for the doing thereof until the then next public meeting under the said fiat, which was granted to him accordingly. And whereas the said *A. B.* did on this — day of —, 186—, being the next meeting as aforesaid, again surrender himself to me, *E. H.*, the said commissioner, in order to finish his examination, and to make a full disclosure of his estate and effects, and did make and sign the declaration required by law: [*where bankrupt's time for surrender has been enlarged, substitute for the preceding, from "thereunder," the following:—*and whereas notice was given in the London Gazette of the — day of —, 186—, that the said *A. B.* was thereby required to surrender himself to me the said commissioner, on the — and — days of — last past, at — o'clock in the —

noon, at the court of bankruptcy, Basinghall-street, in the city of London, and make a full disclosure and discovery of his estate and effects : and whereas an order made by me, the said commissioner acting in prosecution of the said petition, and bearing date the — day of —, the time for his disclosing and discovering his estate and effects and finishing his examination, was enlarged to the — day of — : and whereas the said *A. B.* attended me, the said commissioner, on this day pursuant to the said order, for the purpose of finishing his examination, and making a full disclosure and discovery of his estate :] and I, *E. H.*, the said commissioner, in execution of the power and authorities given by the several statutes made and now in force concerning bankrupts, having required him to make a full disclosure of his estate and effects, and having caused the following question to be proposed to him the said *A. B.*, that is to say [*here state the question*], to which question so put by me the said commissioner as aforesaid, the said *A. B.* refused to give any answer [*or any other than the following answer, that is to say, here state the answer*, which answer of the said *A. B.* not being satisfactory to me the said commissioner] : These are therefore to will, require and authorize you, immediately upon the receipt hereof, to take into your custody the body of the said *A. B.*, and him safely to convey to the — prison, and him there to deliver to the keeper of the said prison, who is hereby required and authorized, by virtue of the statutes aforesaid, to receive the said *A. B.* into his custody, and him safely to keep and detain, without bail or mainprize, until such time as he shall submit himself to the commissioner of the said court of bankruptcy acting in prosecution of the said petition, and full answer make, to his satisfaction, to the question so put to him as aforesaid, and for so doing this shall be your sufficient warrant.

Given under the seal of the court this — day of —, 186—.

E. H., Commissioner.

To *G. H.* our messenger or his assistant,
and to — the keeper of the —
prison or his deputy there.

No. 129.

Summons to Witness after Adjudication.

“The Bankruptcy Act, 1861.”

Whereas *A. B.*, of —, hath been duly declared and adjudged bankrupt within the true intent and meaning of the statute made and in force concerning bankrupts, and such bankruptcy is in due course of prosecution in her majesty's court of bankruptcy, in London. B. L. C. A. 1849,
sect. 120.

These are to will and require you to whom this summons is directed, personally to be and appear before —, esquire, the — of the said court, acting in the prosecution of the said bankruptcy, on — the — day of —, at — of the clock in the — noon precisely, at the court of bankruptcy, in Basinghall-street, London, then and there to be examined under the said bankruptcy, by virtue of the statutes in such case made and provided.

And hereof you are not to fail at your peril. Given under my hand and the seal of the court of bankruptcy, this — day of —, 186—.

—, Registrar.

To —.

No. 130.

Affidavit for a Habeas Corpus to bring a Witness up if in Custody.

In the Queen's Bench [*or Common Pleas*].

T. L., of —, gentleman, solicitor to the petition next hereinafter mentioned, maketh oath and saith, that, on or about the — day of — last past, a certain petition for adjudication in bankruptcy was filed against one *A. B.*, of —, under which the said *A. B.* was adjudged a bankrupt. And this deponent further saith, that one *E. G.*, now a prisoner for debt in the Queen's prison [*or the gaol for the county of —*], can give material evidence touching the estate and affairs of the said bankrupt, as this deponent has been informed and verily believes ; and this deponent thinks it material and necessary that the said *E. G.* should be examined, touching the same, before —, esquire, the commissioner acting in prosecution of the said petition.

Sworn at my chambers, in Serjeants' Inn,
Chancery-lane, London, this — day of }
—, 186—.

*** To be written on plain paper and sworn. If the party have not as yet been declared bankrupt, this form of the affidavit must be altered accordingly.

No. 131.

Præcipe for the Writ.

London to wit: habeas corpus for *E. G.* to testify before —, esquire, one of the commissioners of her majesty's court of bankruptcy acting in prosecution of a petition for adjudication in bankruptcy against *A. B.*, touching the estate and effects of the said bankrupt, returnable on —, 186—.

T. L., Solicitor to the said petition.

*** *To be written on plain paper.*

No. 132.

Writ of Habeas Corpus thereon.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the keeper of the Queen's prison [*or the sheriff of —, or other officer in whose custody the prisoner is*], greeting: We command you that you have the body of *E. G.*, detained in our prison under your custody, as it is said, under safe and secure conduct, before —, esquire, one of the commissioners of our court of bankruptcy, acting in prosecution of a certain fiat in bankruptcy against *A. B.*, at the court of commissioners of bankrupt, on Wednesday, the — day of — next, by — of the clock in the — noon of the same day, then and there to testify the truth, according to his knowledge, touching the [estate and affairs] of the said bankrupt; and immediately after the said *E. G.* shall then and there have been examined before the said commissioner, that you return him to our said prison under safe and secure conduct; and have you there this writ.

Witness —, at Westminster, this — day of —, in the — year of our reign.

No. 133.

Report of Official Assignee upon the State of Affairs of the Bankrupt.

In the Court of Bankruptcy.

In the matter of A. B., of —, a bankrupt.

B. A. 1861, sect. 143.

The accounts present the following facts and particulars at this date, viz. :—

The amount owing to creditors unsecured is	£
" " " to be paid in full	£
" " creditors holding securities	£ : :
Less property held by them	: :
" " creditors on bills discounted is	£ : :
Less to be taken up by third parties	: :
" " holders of accommodation bills	£ : :
Less to be taken up by third parties	: :
	£

The amount of assets, viz. :—

Debtors—	
Good	£ : :
Doubtful	: :
Bad	: :
Estimated to realize	£
Property—	
Stock, fixtures and fitting	: :
Lease and goodwill	: :
Household furniture	: :
Other properties	: :
Estimated to realize	£
Deficiency	£

The amount of the bankrupt's expenditure for the support of himself and family, for the year next preceding his bankruptcy, was £ —; for the previous year, £ —.

The books of account, kept by the bankrupt and delivered to me, are as follows:—

Name of creditors' assignee (if any).

Amount of assets collected by the official assignee, £ —.

Amount paid into the bank by the creditors' assignee, £ —.

The special circumstances are —.

Exhibited to me this — day of —, 186—.

— Commissioner.

— Official Assignee.

No. 134.

Memorandum of Examination of Bankrupt.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the matter of —, a bankrupt.

Memorandum.—That I — the above-named bankrupt, having come before — esquire, a commissioner of the said court, in order to make a full and true discovery and disclosure of my estate and effects, pursuant to notice in the London Gazette, for that purpose given, and being sworn and examined at the time and place above mentioned upon my oath say, that the statement of accounts filed on the — day of — with the proceedings in the above matter, containing — sheets of paper, the first sheet whereof is marked with the letter A, — true, and that the said statement of accounts — and the goods and things seized under my bankruptcy and the books, papers and writings, securities for monies, goods and effects delivered up by me to my assignee under this bankruptcy, together also with — do contain and are a full and true disclosure and discovery of all my estate and effects both real and personal; and how and in what manner, to whom and upon what consideration, and at what time or times I have disposed of, assigned or transferred any of my goods, wares, merchandizes, monies or other estate or effects; and all books, papers and writings relating thereto, or which I was possessed of, or in or to which I was anywise interested or entitled, or which any person or persons had, or hath or have had in trust for me or for my use, at any time, before or after my said bankruptcy, or whereby I or my family have, or may have or expect any profit or possibility of profit, benefit or advantage whatsoever (except only such part of my estate and effects as have really and *bonâ fide* been before sold or disposed of in the way of my trade and dealings; and except such sums of money as have been laid out in the ordinary expenses of myself and my family). And I further say, that at the time of this my examination, I have delivered up to the said commissioner, or unto my said assignees, all such parts of my goods, wares and merchandizes, money, estate and effects, and all books, papers and writings relating thereto, as are now in my custody, possession or power (my necessary wearing apparel and the necessary wearing apparel of my wife and children only excepted). And I further say, that I have not removed, concealed, embezzled or destroyed any part of my estate, real or personal, nor any books of accounts, papers or writings relating thereto, with an intent to defraud my creditors.

Memorandum.—The above-mentioned — were by the consent of the creditors present returned to the bankrupt.

The bankrupt being asked the usual questions, answered —.

No. 135.

Memorandum of last Examination.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the bankruptcy of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—This being the day appointed for a public sitting of the court for the said bankrupt to pass his last examination, and also to make application for his discharge under "The Bankruptcy Act, 1861" (whereof and of the purport whereof

the notice required in that behalf was duly given), I, the commissioner acting in the prosecution of the said bankruptcy, held a public sitting at the time and place above mentioned, for the purposes aforesaid, when the said bankrupt passed his last examination and made application for his discharge. And having heard what was alleged by Mr. —, the solicitor for the said bankrupt, and by Mr. —, the solicitor for the — assignee [*if any other persons appeared state it*]. It was adjudged by the court that the said bankrupt was entitled to such discharge [*if suspended, alter the form accordingly and state the reasons for such suspension*], and the same is hereby granted.

—, Commissioner.

No. 136.

Order setting aside Pay of an Officer, &c.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of —, a bankrupt.

Before Mr. Commissioner —.

B. A. 1861, sect.
134.

Whereas it appears to the court that the said bankrupt is a captain in her majesty's — regiment of —, and as such captain is in the enjoyment of the annual pay of £—, and that the annual sum of £—, portion of the said pay, ought to be paid to the official assignee of the estate and effects of the said bankrupt, in order that the same may be applied in payment of the debts of the said bankrupt, and that such payment ought to commence out of the first monies which shall be due on account of the said bankrupt after the — day of — now next ensuing, and be continued until the court shall make order to the contrary: The court doth hereby communicate to the right honorable the secretary of state for war, that it is intended by the court to order the said sum of £— to be so paid as aforesaid, if upon receipt of this communication the said secretary shall consent thereto in writing according to the statute.

—, Commissioner.

The Form of the Approval by the Head of the Department endorsed on the back of the Order:—

I consent that £— shall be paid annually out of the full pay [half-pay, pension, &c., as the case may be], of — to the assignees of his estate and effects as herein proposed.

(Signed) A. B., Secretary of State for, &c.

[In one particular case, the authorities at the Horse Guards and the secretary of state for war declined to sanction the order on the ground that —, and the consequence was, that the officer in question was compelled to sell his commission for the benefit of his creditors.

[The Admiralty adopts a different rule with regard to officers of the navy on full or half-pay. It permits —.

No. 136 a.

Order setting aside Portion of Pension for Wounds.

Whereas it appears to the court that the said bankrupt is in receipt of a pension of — per annum from her majesty's government, granted in 18— for wounds received in her majesty's service as a — in her majesty's regiment, &c., and that the annual sum of —, portion of such pension, ought to be paid to the official assignee of the estate and effects of the said bankrupt, in order that the same may be applied in payment of the debts of the said bankrupt, and that such payment ought to be made by equal quarterly payments, the first quarterly payment to commence and be made out of the first money which shall be due to the said bankrupt on account of the said pension as soon as one whole quarter's payment shall have been received by the bankrupt after the date hereof, and that such payments should be continued until the court shall order to the contrary: The court doth hereby communicate to the right honorable the secretary of state for war that it is intended by the court to order the said sum of — to be so paid as aforesaid, if upon receipt of this communication the said secretary of state shall consent thereto in writing according to the statute.

J. E., Commissioner.

No. 136 b.

Another Form.

Whereas it appears to the court that the said bankrupt is in the receipt of a pension of — per annum from the —, and that the annual sum of —, portion of such pension, ought to be paid to the assignee or assignees of the estate and effects of the said bankrupt, in order that the same may be applied in payment of the debts of the said bankrupt, and that such payments ought to be made by quarterly payments of — each, the first quarterly payment to commence, &c., out of the first monies which shall be due to the said bankrupt on account of the said pension after the — day of — now next ensuing, and be continued until the court shall make order to the contrary, the court doth hereby communicate to the right honorable the secretary of state for India that it is intended by the court to order the said sum of — to be paid as aforesaid, if, upon receipt of this communication, the said secretary shall consent thereto in writing according to the statute.

No. 137.

Order setting aside Portion of future Earnings.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—This being the day appointed for a public sitting of the court for the said bankrupt to pass his last examination, and also to make application for his discharge under "The Bankruptcy Act, 1861" (whereof and of the purport whereof the notice required in that behalf was duly given), I, the commissioner acting in the prosecution of the said bankruptcy, held a public sitting at the time and place above mentioned, for the purposes aforesaid, when the said bankrupt passed his last examination and made application for his discharge, and having heard what was alleged by Mr. —, the solicitor for the said bankrupt, and Mr. —, the solicitor for the assignees, and the said bankrupt having consented to pay into the hands of the official assignee acting in the prosecution of his petition an annual sum of —, to be paid by monthly instalments of —, towards the gradual liquidation of the debts contained in his petition, the first of which payments is to be made on the — day of — now next ensuing: It was adjudged by the court that the said bankrupt was and is entitled to such discharge, subject to the condition that the said bankrupt shall and do duly make all and every of the payments before mentioned.

B. A. 1861, sect. 159.

E. G., Commissioner.

No. 138.

Order adjourning Consideration of Order of Discharge with a view to the Prosecution of the Bankrupt for an Offence.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, adjudged bankrupt on the — day of —, 186—.

Before Mr. Commissioner —.

This being a public sitting of the court, held by adjournment from the — day of — last, at the court of bankruptcy, London, for the purpose of considering the question of granting to the bankrupt his order of discharge under "The Bankruptcy Act, 1861," whereof and of the purport whereof the notice in that behalf was duly given, now, upon hearing Mr. —, solicitor for the creditors' assignee, and Mr. — of counsel for the said bankrupt, and it appearing to the court that the creditors' assignee is advised to commence criminal proceedings against the said bankrupt under "The Bankruptcy Act, 1861," the consideration of the bankrupt's order of discharge is hereby further adjourned to the — day of — next, at — o'clock at noon.

B. A. 1861, sect. 221.

E. H., Commissioner.

No. 139.

Order giving the Creditors' Assignee Liberty to take the Bankrupt before a Justice of the Peace with a view to Prosecution.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, adjudged bankrupt on the — day of —, 186—.

Before Mr. Commissioner —.

B. A. 1861, sect.
221.

Upon the accusation by the creditors' assignee against the said bankrupt of acts amounting to misdemeanor under the third and fifth clauses of the 221st section of "The Bankruptcy Act, 1861," alleged to have been committed by the said bankrupt, within the — of —, and upon the application of Mr. —, solicitor for the creditors' assignee, and upon reading the examinations and proceedings under the bankruptcy, the court hereby orders that the creditors' assignee be at liberty, at the costs of the bankrupt's estate, to cause the said bankrupt to appear, or to be brought in due form of law before a justice of the peace for the — of — and county of the same — to answer such accusation, and to be further dealt with according to law.

E. H., Commissioner.

No. 140.

Of Warrant of Commitment for an Offence under Sect. 159 of the Bankruptcy Act, 1861.

"The Bankruptcy Act, 1861."

In the matter of *R. H.*, adjudged bankrupt on the — day of —, 186—.

B. A. 1861, sect.
159.

Whereas at a public sitting of the court, held on the — day of —, 186—, and by adjournment on the — day of — last, at the court of bankruptcy, London, for the said bankrupt to pass his last examination and also to make application for his order of discharge, under "The Bankruptcy Act, 1861" (whereof and of the purport whereof the notice required in that behalf was duly given), the said bankrupt passed his last examination, and upon application then and there made by the said bankrupt for such discharge, and upon hearing Mr. *D.* of counsel for the said bankrupt, Mr. *A.*, solicitor for the official assignee, and by Mr. *H.*, of counsel for *L. R.*, the opposing creditor, it was adjudged by the court that the discharge of the bankrupt should be suspended, and the same was therefore suspended for two years from that day. And it was further ordered, that the said bankrupt should be imprisoned for six months, and that such imprisonment should commence at the expiration of thirty days from the said — day of —, 186—. The reason of such suspension and sentence of imprisonment being that the bankrupt's debts were contracted without any reasonable or probable ground of expectation of his being able to pay the same, that he had wilfully omitted to keep proper books of account, and that his insolvency was attributable to rash and hazardous speculation. And whereas the thirty days allowed by the said above-recited order had expired on the — day of — now last past; and whereas the matter in respect of which such imprisonment was adjudged occurred after the passing of "The Bankruptcy Act, 1861;" and whereas no appeal against the said judgment has been brought: These are therefore to will, require and authorize you, immediately upon receipt hereof, to take into your custody the body of the said *R. H.*, and him safely to convey to the debtors prison for —, situate in —, and him there to deliver to the keeper of the said prison, together with this precept. And the keeper of the said prison is hereby required and authorized to receive the said *R. H.* into his custody, and him safely to keep and detain, without bail or mainprize, for the term of six months, to be computed from the — day of — last; and for so doing this shall be your sufficient warrant.

Given under my hand and the seal of the court, at the court of bankruptcy, —
this — day of —, 186—.

E. H., Commissioner.

To Mr. —, messenger of the court of bankruptcy, or his assistant, and to the keeper of — prison, or his deputy there.

No. 141.

Order directing Prosecution of Bankrupt.

"The Bankruptcy Act, 1861."

In the Bankruptcy Court.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt under petition for adjudication filed on the — day of —, 186—.

Upon hearing Mr. *M.*, of counsel on behalf of the assignee of the estate and effects of the above-named bankrupt, and upon reading the examination and proceedings in the said bankruptcy, and it appearing to the court that the bankrupt is accused of acts amounting to a misdemeanor under "The Bankruptcy Act, 1861:" It is ordered, that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice, pursuant to the provisions of the above-named statute. B. A. 1861, sect. 159.

E. G., Commissioner.

No. 142.

Order for the Payment of Costs of Prosecution.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt under a petition for adjudication filed on the — day of —, 186—.

Whereas, on the — day of —, 186—, an order was made by this court as follows:—

Upon hearing Mr. *M.*, of counsel on behalf of the assignee of the estate and effects of the above-named bankrupt, and upon reading the examination and proceedings in the said bankruptcy, and it appearing to the court that the bankrupt is accused of acts amounting to a misdemeanor under "The Bankruptcy Act, 1861:" It is ordered that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice, pursuant to the provisions of the above-named statute. B. A. 1861, sect. 223.

E. G., Commissioner.

And whereas the said *A. B.* hath been lately indicted and prosecuted at the — court, in the —, in pursuance of such order, and was —; and whereas it appears to this court that the said — court hath allowed and paid to the said assignees or their solicitor the sum of £— on account of the expenses of such prosecution; and whereas it further appears to this court that the costs and expenses incurred in such prosecution other than those so allowed by the said — court have been taxed and allowed by the proper officer of this court at the sum of £—, which, after deducting thereout the said sum of £—, leaves the sum of £— to be paid out of the monies standing to the credit of the account intituled "The Chief Registrar's Account:" Now, I do order that the said sum of £— be paid to *W. C. S.* and *F. T.*, solicitors to the assignees, or to any or either of them, out of the monies standing in the bank of England to the credit of account intituled "The Chief Registrar's Account."

E. H., Commissioner.

No. 143.

Order for Separate Sitting for Order of Discharge.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

Before Mr. Commissioner —.

Upon the representation of the assignees (by Mr. —, their solicitor) that there are special circumstances connected with the bankrupt's estate which render it inexpedient that the bankrupt's application for his discharge should be taken into consideration on the day appointed for his passing his last examination, the court doth order that a public sitting be appointed for — the — day of —, 186—, at — o'clock in the —, for the bankrupt to apply for the granting of an order of discharge. B. A. 1861, sect. 158.

—, Registrar.

—, Commissioner.

No. 144.

Notice in Gazette of Day appointed for Application for Discharge.

"The Bankruptcy Act, 1861."

B. A. 1861,
sect. 158.

A. B., of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy filed in her majesty's court of bankruptcy, in London, on the — day of —, 186—, a public sitting will be held before —, esquire, a commissioner of the said court, on the — day of — 186—, at the said court at Basinghall-street, in the city of London, at — o'clock in the — noon precisely, for the purpose of considering the question of granting the said bankrupt an order of discharge. G. J. G., of —, is the official assignee, and G. H., of —, is the solicitor acting in the matter of the bankruptcy.

No. 145.

Memorandum of Allowance at Special Sitting for Discharge.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the bankruptcy of —, a bankrupt.

Before Mr. Commissioner —.

Memorandum.—This being the day appointed for a public sitting of the court for the said bankrupt to make application for his discharge under "The Bankruptcy Act, 1861" (whereof and of the purport whereof the notice required in that behalf was duly given), I, the commissioner acting in the prosecution of the said bankruptcy, held a public sitting at the time and place above mentioned, for the purposes aforesaid, when the said bankrupt made application for his discharge; and having heard what was alleged by Mr. —, the solicitor for the said bankrupt, and by Mr. —, the solicitor for the assignees [*if any other persons appeared, so state*], it was adjudged by the court that the said bankrupt was and is entitled to such discharge. [*If suspended, alter the form accordingly, and state the reasons for such suspension.*]

E. H., Commissioner.

No. 146.

Notice in Gazette of the granting of Order of Discharge.

"The Bankruptcy Act, 1861."

B. A. 1861,
sect. 172.

The bankrupts hereinafter named have had orders of discharge granted or suspended as hereinafter mentioned by the several courts acting in prosecution of their respective bankruptcies, and such orders will be delivered to the bankrupts unless an appeal be duly entered against the judgment of the court, and notice thereof be given to the court.

A. B.,

C. D.,

adjudicated bankrupt, the — day of —, 186—. An order of discharge was — by the court of bankruptcy, London, on the — day of —, 186—.

No. 147.

Notice in Gazette of Meeting for Dividend.

"The Bankruptcy Act, 1861."

B. A. 1861,
sect. 174.

Meetings of the creditors of the bankrupt hereinafter named will be held, pursuant to the 174th section of the said act, at the time and place hereinafter mentioned, that is to say:—

At the Court of Bankruptcy, Basinghall-street, in the city of London, before —, Esq., Registrar.

A. B., of —, adjudicated bankrupt the — day of —, 186—. A dividend meeting will be held the — day of — next, at — o'clock in the — noon precisely.

C. D., of &c.

E. F., of &c.

At the said meetings the assignees will, in pursuance of the 174th section of the said act, submit statements of the bankrupt's estates recovered and outstanding, and of all receipts and all payments made or to be made thereout, and the creditors at the said respective meetings will, in pursuance of the said section, declare whether any and what dividend shall be made, and whether any and what allowance shall be paid to the said bankrupt respectively. Proofs of debts will be received, and creditors who have not proved, or do not then prove, will be excluded from the benefit of the dividend, and all claims not proved will be disallowed.

No. 148.

Memorandum of Adjournment of Dividend Meeting.

Whereas, a meeting was duly convened of the creditors of the said —, 186—, to be held this day at —, for the purpose of declaring whether any and what part of the net produce of the estate of the said — should be divided among the creditors; and whereas [here state the reasons for an adjournment], I, —, the registrar, presiding at the said meeting, do hereby adjourn the further proceedings to a meeting of the said creditors, to be held at —, on —, 186—.

W. H., Registrar.

No. 149.

Memorandum of Resolution for a First Dividend.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

Before Mr. Registrar —.

In the matter of B. B. and A. R., bankrupts.

The — day of —, 186—.

Memorandum.—That at a meeting of the creditors of the said bankrupts, duly called for the purposes hereafter set forth, and holden at the time and place above named, D. E., the younger, and R. F., the creditors' assignees of the estate and effects of the said bankrupts, submitted to the meeting statements of the whole estate of the bankrupts as now ascertained, of the property recovered, and of the property outstanding, and of all the receipts, and of all the payments made or to be made, and the official assignee and the creditors examined such statements, and compared the receipts with the payments, and the several balances in the bank of England to the credit of the joint and separate estates of the said bankrupts, were ascertained to be as follows:— The balance to the credit of the joint estate of the bankrupts, the sum of £ —, the balance to the credit of the separate estate of the bankrupt B. B., the sum of £ —, the balance to the credit of the separate estate of the bankrupt A. R., the sum of £ —. And it was resolved by the meeting, and the meeting doth declare as follows:—

B. A. 1861,
sect. 174.

That such part of the net produce of the bankrupt's joint estate as shall be sufficient to pay to the joint creditors who have proved or claimed debts the sum of — in the pound shall be divided amongst such creditors:

That such part of the net produce of the separate estate of the bankrupt B. B. as shall be sufficient to pay the separate creditors of the said B. B. who have proved or claimed debts the sum of — in the pound shall be divided amongst the said last-mentioned creditors:

That such part of the net produce of the separate estate of the bankrupt A. R. as shall be sufficient to pay the separate creditors of the said A. R. who have proved or claimed debts, the sum of — in the pound, shall be divided amongst the said last-mentioned creditors:

That the several sums shall be respectively paid to the said several creditors who have proved forthwith, and to those who have claimed, when they shall have substantiated their claims, in proportion to their several debts.

No. 150.

Memorandum of Resolution for a Second Dividend.

[The same as in the last form down to the words "and the meeting doth declare as follows:"]

That such part of the net produce of the bankrupt's joint estate as shall be sufficient to pay to the joint creditors who have proved or claimed debts since the

former dividend was declared, the sum of — in the pound shall be divided amongst such creditors :

That such further part of the net produce of the bankrupt's joint estate as shall be sufficient to pay all the joint creditors who have proved or claimed debts, a further sum of — in the pound shall be divided amongst the said last-mentioned creditors :

That such part of the net produce of the separate estate of the bankrupt *B. B.* as shall be sufficient to pay the separate creditors of the said *B. B.* who have proved or claimed debts, the sum of — in the pound shall be divided amongst the said last-mentioned creditors :

That such part of the net produce of the separate estate of the bankrupt *A. R.* as shall be sufficient to pay the separate creditors of the said *A. R.* who have proved or claimed debts, the sum of — in the pound shall be divided amongst the said last-mentioned creditors :

That the said several sums shall be respectively paid to the said several creditors who have proved forthwith, and to those who have claimed, when they shall have substantiated their claims in proportion to their several debts.

No. 151.

Memorandum of Resolution for a Final Dividend.

[The same as in form 149, down to the words "and the meeting doth hereby declare as follows :"]

That out of the said sum of —, standing to the credit of the separate estate of the said *B. B.*, the manager, be repaid the various sums paid by him on account of the said estate, and appearing by the said accounts not to have been returned to him. That out of the said sum of —, standing to the credit of the separate estate of the said *A. R.*, the manager, be repaid the various sums paid by him on account of the said estate, and appearing by the said accounts not to have been returned to him. That any further charges against the said separate estate be paid out of the residue of the said sum, and that such of the said creditors of the said *A. R.* who have proved their debts, but who have not been paid — in the pound upon the amount of their said debts, to be paid — in the pound upon such debts, and that the balance of the said sum of —, after making the payment aforesaid, be transferred to the joint estate of *B.* and *R.* :

That such part of the net produce of the joint estate as shall remain after repayment to the manager of any monies paid by him on account of the said estate, and appearing by the said accounts not to have been returned to him, and after discharging all costs, charges and expenses which the assignees have incurred or are liable to pay to the present time, shall be divided as follows :—that is to say, amongst those creditors who have proved their debts since the last dividend was declared, the sum of — in the pound, and the residue amongst all the joint creditors who have proved or claimed debts, to be paid to those creditors who have so proved forthwith, and to those who have so claimed when they shall have substantiated their claims in proportion to their several debts. And it is hereby resolved and declared that the dividend hereby declared shall be final.

No. 152.

Power of Attorney to receive Dividends.

In the matter of *A. B.*, of —, a bankrupt.

I, the undersigned [if by more than one creditor, alter throughout accordingly] creditor of the said bankrupt, who have duly proved my debt under the said bankruptcy, do hereby appoint *G. H.*, of —, as my attorney, to receive for me the dividend or dividends that may be due and payable to me out of the said estate, and to give a receipt for the same, which receipt shall be as valid and binding a discharge to the person by whom such dividend shall be payable to all intents and purposes as if the same had been given and signed by myself.

As witness my hand,

A. B., of —.

Signed by the said *A. B.* this — day }
 of —, 186—, in my presence, }
C. D., Solicitor.

No. 153.

Application by Assignees for Certificate under which to pay in Unclaimed Dividends in their hands.

To the Court of Bankruptcy, London.

Estate of *A. B.*, of —, a bankrupt.

We, the undersigned, being the assignees of the estate and effects of the said bankrupt, hereby certify that we have in our hands, or subject to our order or disposition, the following unclaimed dividends, in respect of debts proved against the said estate, that is to say: B. A. 1861, sect. 181.

Names of Creditors to whom the dividends are due.	Amount and particulars of dividends unclaimed.
<i>J. W.</i>	£ s. d. 6 0 0 a dividend of six shillings in the pound upon a debt of 20 <i>l.</i> proved by him.
&c.	&c. &c.
Total	—

And we hereby apply for a certificate upon which to pay into the bank of England the above-mentioned sum of £— to the account intituled "The Unclaimed Dividend Account."

(Seal) *A. B. & C. D.*

Order thereupon.

Let the said amount be paid in as desired.

A. B., Registrar.

C. D., Commissioner.

Certificate of Accountant in Bankruptcy.

I hereby certify that, pursuant to the above application and the order thereupon, the above assignees are to pay into the bank of England the sum of £—, which is to be placed to the credit of my account as accountant in bankruptcy, and of the unclaimed dividend account. B. A. 1861, sect. 183.

To the Governor and Company of the }
Bank of England.

(Seal) *R. A.*, Accountant.

Receipt.

Received the above sum of £— this — day of —.

M. R., Cashier.

* * * *This form, when filled up and completed, to be filed with the proceedings, or, if these are lost, with the chief registrar.*

No. 154.

Copy of List of Unclaimed Dividends filed in the Chief Registrar's Office.

"The Bankruptcy Act, 1861."

Unclaimed Dividend Account.

Estate of *A. B.*, of —.

Chief Registrar's Office,
— day of —.

On the — day of — a list of unclaimed dividends in the above estate was filed in this office, and in which list the name of *M. N.* is set forth as a creditor entitled to the sum of £— as a dividend due to him.

ADDITIONAL FORMS.

No. 155.

Declaration of Creditors' Assignee or Solicitor, or Agent to either.

"The Bankruptcy Act, 1861."

Unclaimed Dividend Account.

Estate of *A. B.*, of —.

The — day of —.

I, *C. D.*, of —, assignee of the estate and effects of *A. B.*, do hereby declare, that on the — day of — the sum of £ — was paid into the bank of England to the credit of "the unclaimed dividend account," in pursuance of the act above recited; and I further declare, that the sum of £ — standing against the name of *M. N.* in the list of unclaimed dividends, filed with the chief registrar of the court of bankruptcy, formed part of the said sum of £ — so paid into the said bank of England.

—, Assignee.

No. 156.

Certificate of Accountant in Bankruptcy.

I certify that the sum of £ — now stands to the credit of the above estate, and that the said sum of £ — does not appear by my books to have been paid to the said *M. N.* mentioned in the above declaration.

—, Accountant in Bankruptcy.
— day of —.

No. 157.

Affidavit of Creditor.

"The Bankruptcy Act, 1861."

Unclaimed Dividend Account.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, of —.

I, *M. N.*, of —, make oath and say that the sum of —, set out against the name of —, in the list of unclaimed dividends, hath not been received by me [*if as executor, assignee, &c. insert the same*], or to my knowledge and belief by any other person to my use; and that I am legally entitled to receive the same.

M. N.

Sworn before me this — day of —.
—, Registrar.

No. 158.

Order of Payment to Creditor.[*Heading as in last.*]

It appearing by a list of unclaimed dividends certified by the chief registrar of the court of bankruptcy, by a declaration of the assignee under the estate, and by a certificate of the accountant in bankruptcy, severally exhibited to me, that the name of *M. N.* is set out as being entitled to a dividend amounting to £ —, which still remains in the bank unpaid:

And it further appearing by an affidavit of *M. N.* that he is legally entitled to the same:

I order that the said dividend of — be paid to — out of the monies standing to the credit of the accountant in bankruptcy, "the unclaimed dividend account."

£ —.

C. D., Creditors' Assignee.

—, Commissioner.
—, Registrar.

Estate of —.

Pursuant to the above order pay to — the sum of —, to be charged to my account as accountant in bankruptcy, "the unclaimed dividend account."

To the Cashier of the Bank of England.

—, Accountant.

No. 159.

Memorandum of Particulars of Deed.

B. A. 1861, s. 193, p. 1219.

"The Bankruptcy Act, 1861."

Title of deed, whether deed of assignment, composition or inspectorship.	Date of deed.	Date of execution by debtor.	Name and description of the debtor as in the deed.	Names and descriptions of the trustees or other parties to the deed, not including the creditors.	A short statement of the nature of the deed.

— Attorney or solicitor or party producing the deed.

No. 160.

Advertisement of Registration.

"The Bankruptcy Act, 1861."

Notice is hereby given, that the following is a copy of the entry made in the book B. A. 1861, kept by the chief registrar of the court of bankruptcy, for the registration of trust sect. 193. deeds for the benefit of creditors, composition and inspectorship deeds executed by a debtor, as required by "The Bankruptcy Act, 1861," ss. 187, 192, 194, 196 and 198.

Number —.

Title of deed, whether deed of assignment, composition or inspectorship :—

Date of deed :—

Date of execution by debtor :—

Name and description of the debtor as in the deed :—

Names and descriptions of the trustees or other parties to the deed, not including the creditors :—

A short statement of the nature of the deed :—

When left for registration :—

No. 161.

Affidavit of Truth of the Account of Debts of Debtor to be delivered to the Chief Registrar.

In the Court of Bankruptcy, London.

In the matter of a deed or instrument for the benefit of creditors, executed by A. B., of —.

I, the above-named A. B., the debtor named in the account hereunto annexed, marked with the letter A., make oath and say, that the said account is a full and true account to the best of my knowledge, information and belief, of all my debts, which respectively amount to £10 and upwards, and including debts secured, and showing the estimated value of any security held for the same or any of them, and of the names and residences of my creditors as required by the General Order, 22nd May, 1862.

General Order,
22nd May,
1862.

Sworn at —, in the — of —,
this — day of —, one thou-
sand eight hundred and sixty —.
Before me —.

No. 162.

Order to register Deed without Verification by Debtor himself of Account of Debts.
In the Court of Bankruptcy, London.

—, 186—.
In the matter of a deed of inspectorship between *A. B.*, of — [setting out parties].

Upon hearing Mr. —, of counsel [or solicitor] for the above-named inspectors, and upon reading the joint affidavit of *W. S.* and *J. N.*, sworn this day, and two several affidavits of *R. W.* and the medical certificate referred to in the affidavit of the said *R. W.* sworn this day, I do order that the chief registrar be at liberty to register the said deed upon the verification thereof by the said *W. S.* and *J. N.* as appearing by their said affidavit and without requiring the account of the debts to be verified by the oath of the debtor himself.

G. H., Commissioner.

No. 163.

Order enlarging Time for Registration of Deeds.
"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of a deed of assignment between — and his creditors, bearing date and executed by the debtor on the — day of —, 186—.

Before Mr. Commissioner —.

B. A, 1861,
sect. 194.

Upon the application of Mr. —, agent for the debtor, and on reading his affidavit sworn and filed this day, I do order that the said —, the debtor, shall be allowed further time, until the — day of — inclusive, for the registration of the said deed of assignment, so that it may be receivable in evidence under the 194th section of the said act; but this order is in no way to interfere with the 4th condition of the 192nd section of the act.

—, Commissioner.

No. 164.

Notice to Petitioning Creditor for Dismissal of Petition presented after Registration of Deed.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of *A. B.*, against whom a petition for adjudication of bankruptcy has been lately filed.

B. A. 1861,
sect. 199.

Take notice, that we shall on behalf of the above-named *A. B.* and the trustees, under an indenture of settlement executed by him, apply to —, esquire, commissioner at the court of bankruptcy, Basinghall-street, in the city of London, on —, the — day of —, at — precisely, for an order directing that all proceedings under the said petition for adjudication may be stayed, and that the said petition may be dismissed; the said petition having been presented after execution by the said *A. B.*, of an assignment for benefit of creditors, and such indenture of assignment having since been duly registered, in pursuance of "The Bankruptcy Act, 1861:" And we further give you notice, that the said indenture of assignment is a trust deed for the benefit of creditors within the meaning of the said act, and that the several conditions required by the said act, in order to make such deed as valid and effectual and binding on all the creditors of the said *A. B.*, as if they were parties to and had duly executed the same, have been observed.

Dated this — day of —, 186—.

Yours, &c.

Solicitors for the said —, and the trustees
under the said deed.

To the petitioning creditor under
the said petition, and to *M. N.*,
his solicitor.

Affidavit of Debtor who executed Deed.

In the Court of Bankruptcy, London.

I, the above-named A. B., make oath and say as follows:—

1. The deed of assignment for benefit of my creditors, dated the — day of —, was executed by me on the said — day of —.
2. In the schedule hereunder written is contained a list of all my creditors whose debts amount to 10*l.* or upwards, to whom I was indebted at the date of the said deed, and the sums in such schedule respectively set opposite to their respective names in the first column were then and are now the debts due by me to them respectively.
3. The debts due by me to my said creditors amount to the sum of —, and my creditors to whom such debts are due are — in number.
4. More than a majority in number (to wit —), representing more than three-fourths in value (to wit, the sum of —), of my said creditors whose debts respectively amount to 10*l.* and upwards, have before or after my execution thereof in writing assented to or approved of the said deed, and the several creditors, the amounts of whose debts are respectively carried out in the second column in the said schedule, have respectively executed the said deed of trust or assented thereto in writing.
5. The trustee appointed by such deed has executed the same.
6. My execution of the said deed was attested by Mr. —, of —, attorney and solicitor.
7. Within twenty-eight days of my execution of such deed the same was produced and left, having been first duly stamped, at the office of the chief registrar for the purpose of being registered, and was, as I believe, duly registered as required by "The Bankruptcy Act, 1861."
8. Together with such deed there was delivered to the chief registrar an affidavit made by me, stating the amount in value of my property and credits comprised in the said deed, and that a majority in numbers representing three-fourths in value of my creditors whose debts amount to 10*l.* or upwards, had in writing assented to or approved of such deed or instrument.
9. Such deed before registration as aforesaid bore such ordinary and *ad valorem* stamp duties as required by "The Bankruptcy Act, 1861."
10. Immediately after my execution of the said deed, possession of all the property comprised therein, of which I could give or order possession, was given to the trustee.
11. I am advised and believe, that the said deed is as binding and effectual on all my creditors as if they were parties to and had duly executed the same.

The Schedule referred to.

No.	Names of Creditors.	Amount of Debts.	Amount of Assents.	Amount of Dissents.
		£ s. d.	£ s. d.	£ s. d.

No. 166.

Order dismissing Petition presented after Registration of a Deed.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

In the matter of a petition for adjudication of bankruptcy presented against
A. B.; andIn the matter of a deed between the said *A. B.* and his creditors, bearing
date the — day of —, 186—.

Before Mr. Commissioner —.

B. A. 1861,
sect. 199.

Upon application this day made to this court on behalf of the said *A. B.* that all proceedings under the said petition for adjudication might be stayed, and that the said petition might be dismissed, the said petition having been presented after execution by the said *A. B.* of the said deed, and the same deed having been duly registered in pursuance of "The Bankruptcy Act, 1861;" and upon reading the affidavit of the said *A. B.* filed in support of the said application and the proceedings in this matter, and upon hearing Mr. —, solicitor for the said *A. B.*, and Mr. —, solicitor for *R. D.* the petitioning creditor, this court doth order that the said petition for adjudication of bankruptcy presented by the said *R. D.* against the said *A. B.* be and the same is hereby dismissed: And this court doth further order that the costs of the said *R. D.* of the said petition for adjudication of bankruptcy, and incident thereto, and of and occasioned by the said application to dismiss the said petition, be paid subject to prior charges, by *J. H.* and *K. K.* the trustees of the said deed, out of the estate of the said *A. B.*, such costs to be taxed by the master of this court in case of difference between the parties: And it is further ordered, that the said *J. H.* and *K. K.* do have credit in any account rendered by them to the creditors of the said *A. B.* under and by virtue of the aforesaid deed, for the amount (when paid) of the said costs.

G. W., Commissioner.

No. 167.

An Order to release a Debtor in Custody at the Time of Registration of Deed.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy.

In the matter of *A. B.*, of —, in the county of —, now in the gaol of
—, in the county of —, a prisoner for debt.

Whereas, by a deed or instrument dated the — day of —, 186—, made between the said *A. B.* of the first part, *T. C.*, therein described trustee for the creditors of the said *A. B.*, of the second part, and the creditors of the said *A. B.* of the third part, the said *A. B.* conveyed all his estate and effects to the said *T. C.* to be applied and administered as in bankruptcy: And whereas the said deed was duly executed by the said *A. B.*, and was also duly stamped as required by "The Bankruptcy Act, 1861;" and a majority in number, representing three-fourths in value of the creditors of the said *A. B.* whose debts amount to 10*l.* and upwards, having in writing assented to or approved of the said deed, and such being so stamped, executed and assessed, was duly registered by the chief registrar of the court of bankruptcy: And whereas, immediately upon the execution of such deed by the said *A. B.*, he gave possession of all the property comprised therein, of which he could give or order possession, to the said *T. C.* as such trustee as aforesaid: And whereas a copy of the entry of such registration by the said chief registrar in his books, hath been published in the London Gazette of the — day of —, 186—: And whereas it appears to me the undersigned *E. G.*, a commissioner of her majesty's court of bankruptcy, that the said *A. B.* was, at the date of the registration of such deed as aforesaid, and now is in the custody of the keeper of the gaol or prison of —, in the county of —, at the suit of *P. P.* and *W. M.* being creditors of the said *A. B.*, the said *A. B.* having caused notice to be given to the above-mentioned creditors, at whose suit he is detained as aforesaid, of his intention to apply to me this day for his immediate release from prison in pursuance of "The Bankruptcy Act, 1861," the said *A. B.* has now applied to me for his immediate release in pursuance of such notice: Now I, the said *E. G.*, upon reading the affidavit of the said *A. B.* in support of the said application and the affidavit of service of such

notice, and having heard what was alleged by Mr. — of counsel for the said *A. B.*, Mr. —, solicitor for the trustee, and Mr. —, solicitor for the said detaining creditors, do order the immediate release from custody of the said *A. B.* at the suit of the said *P. P.* and *W. M.*

Given under my hand this — day of —, 186—.
 To the keeper of the gaol or prison
 of —, in the county of —, and
 any other officer having the said
A. B. in his custody. } *E. G.*, Commissioner.

No. 168.

Order directing Registration of Deed, where some Creditors are unknown.

"The Bankruptcy Act, 1861."

At the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of the assignment for the benefit of the creditors of *A. B.* and *C. D.*, dated the — day of —, 186—.

Upon hearing Mr. — of counsel and upon reading the deed of assignment for the benefit of the creditors of *A. B.* and *C. D.*, dated the — day of —, 186—; the notice to the creditors of the said *A. B.* and *C. D.* which appeared in the — of the — and — days of —, 186—, and the — of the —, 186—; the affidavit of the said *A. B.* and *C. D.* sworn the — day of —, 186—; the certificate of the trustees of the said deed, dated the — day of —, 186—; and it appearing that the said *A. B.* and *C. D.* have obtained the consent of a majority in number, representing three-fourths in value, of all their creditors to such deed, with the exception of those creditors who are unknown to them by reason of their being unable to ascertain by whom certain bills of exchange, promissory notes and other negotiable securities, accepted, drawn or given by them are holden; and it appearing that all other conditions required by the above act in this behalf have been duly complied with: This court doth direct that the same deed be registered with the chief registrar in bankruptcy. [In another case these words were added:—and that the affidavit required by the General Orders of the 22nd May, 1862, be dispensed with so far as the affidavit verifying the accounts by the debtors is concerned, and that the affidavit of *G. H.* and *K. L.*, sworn on the — day of —, 186—, be received in lieu thereof.]

R. G. C. F., Commissioner.

No. 169.

Application to examine a Debtor under a Deed.

"The Bankruptcy Act, 1861."

In the matter of a trust deed made and entered into by *A. B.*, of &c.

We *R. S.*, of —, and *T. G.*, of —, creditors of the said *A. B.*, apply for a meeting to be appointed to examine the said *A. B.* touching and concerning his estate and effects, and also to examine *C. D.*, of &c., one of the trustees, on the particular grounds stated below. B. A. 1861, sect. 197.

The grounds of the application are:—that the deed is believed to be fraudulent, the trustees friendly, the object of the deed being [state all the grounds fully].

No. 170.

Affidavit.

"The Bankruptcy Act, 1861."

In the matter of a trust deed executed by *A. B.*, of —.

I, *G. H.*, of —, make oath and say:—

1. That the above-named *A. B.* did on or about the — day of —, 186—, execute a trust deed alleged to be for the benefit of his creditors, and which has been registered pursuant to the provisions of "The Bankruptcy Act, 1861." B. A. 1861, sect. 197.

2. That the property to be given up to the trustees is sworn to be under £ —.
3. That *L. M.*, of —, is a creditor of the said *A. B.* on a dishonoured acceptance of the said *A. B.* for —. That I have had the conduct of an action brought by the said *L. M.* on the said bill against the said *A. B.*, and after the record was prepared the said deed was prepared, as I believe solely with a view to defeat the said action.
4. That the said *A. B.* told me during the progress of the said action, and he also told my employer, the said *L. M.*, in my presence, that he had property to the amount of — locked up in the Confederate States of America, and that he only wanted time to pay twenty shillings in the pound.
5. On the — day of — I saw *C. D.*, of —, one of the trustees, and he stated to me that he was to be the acting trustee under the said deed, but that he had not received any statement of assets, nor had any property or effects or books of the said *A. B.* been given up to him.
6. I believe the said deed to be a fraud upon the revenue, and also upon the creditors, and I believe that if the said *A. B.* be examined in this honorable court much benefit will result to his creditors in the discovery of assets belonging to the estate.

Sworn, &c.

G. H.

No. 171.

Summons to Debtor.

"The Bankruptcy Act, 1861."

B. A. 1861,
sect. 197.

By virtue of a trust deed executed by *A. B.*, of —, for the benefit of his creditors, and registered pursuant to "The Bankruptcy Act, 1861:"

These are to will and require you to whom this summons is directed, personally to be and appear before —, esquire, the commissioner acting in the matter of the said deed on the — day of —, 186—, at — o'clock — noon precisely, at the court of bankruptcy, in Basinghall-street, London, then and there to be examined by virtue of the said deed and the statute in such case made and provided. And you are required to bring with you and produce before the said commissioner all and every book and books, documents, vouchers, letters, papers and writings in anywise relating to or concerning the business now or heretofore carried on by you. And hereof you are not to fail at your peril.

Given under my hand and the seal of the court, this — day of —, 186—. To *A. B.*, of —.

No. 172.

Order for Leave to a Creditor to enforce a Judgment notwithstanding Deed.

In the Court of Bankruptcy, London.

The — day of —, 186—.

In the matter of a deed of arrangement by *D. W.* with his creditors, filed the — day of —, 186—; and

In the matter of "The Bankruptcy Act, 1861."

Before Mr. Commissioner —.

Upon reading the order made in the above matter, on the 29th day of July, 186—, and the affidavit of *E. C.*, *R. B.* and *E. H.*, filed the — day of —, 186—, and the said deed of arrangement, and upon hearing Mr. — of counsel for the said *E. C.*, and Mr. —, solicitor, for himself as trustee under the said deed, and the said *D. W.*, I do order that leave be given to the said *E. C.* to enforce and render available the judgment for £ — debt and costs, recovered by the said *E. C.* in the — county court on the — day of — last, against the said *D. W.*, notwithstanding the deed of arrangement entered into by the said *D. W.* with his creditors, filed the — day of —, 186—, and that the said *D. W.* do pay to the said *E. C.* his costs of this application, to be taxed by the master.

E. H., Commissioner.

No. 173.

*Request by Sheriffs of a Scotch County to examine a Person under Sect. 220 of the Bankruptcy Act, 1861.*B. A. 1861,
s. 220.

The following are the forms of the orders made under the provisions of the 220th section of "The Bankruptcy Act, 1861," which provides that "the court and the

district court in London, and the district courts in the country, shall in like manner be auxiliary, for all purposes of proof of debt, and for the examination of persons and witnesses upon oath, or for other like purposes, to the courts acting in matters of bankruptcy or insolvency in Scotland and in Ireland" :—

In the matter of the sequestrated estate of *A. B.*, farmer and cattle dealer,
at —, in the parish of —, and county of —, at —, the — day
of —, 186—.

The sheriff of the county of — acting in this matter, in terms of "The Bankruptcy (Scotland) Act, 1856," hereby, pursuant to the provisions of "The Bankruptcy Act, 1861," now in force in England, and whereby it is enacted that the court of bankruptcy and the district court in London shall be auxiliary for the examination of persons and witnesses upon oath to the courts acting in matters of bankruptcy and insolvency in Scotland, requests the court of bankruptcy in London to summon and examine upon oath before the said court — of —, in the county of —, and all other parties within the jurisdiction of the said court who can give any information touching the said — dealings and transactions with the said bankrupt with reference to — and — farms, in the county of —, and with reference to the claims of the said — to the possession of the said farms, and to or to a lien upon the crops, stock and effects in and upon the same, or to some part thereof, or with reference to any other dealings, transactions or estate of the said —, and to require the persons so to be examined to produce before the said court all deeds, documents, papers and writings in their, or any of their, possession or power, relating or containing any entry relating to the matters aforesaid, or any of them, and to require each of the persons so to be examined to sign his or her examination, and in case of refusal of any person so summoned to attend or to be examined, or to make the production required, or to sign and subscribe his or her examination, then to find against and deal with him or her in manner prescribed by the statutes in force in that behalf.

(Signed)

No. 174.

Application to Court for sitting to examine and order thereon.

"The Bankruptcy Act, 1861."

In the matter of the sequestrated estate of —, of —, Scotland, farmer and cattle dealer.

Messrs. —, solicitors for the trustee, apply for a private sitting, to examine — and other persons, pursuant to a request from the sheriff of the county of — acting in the matter.

Dated the — day of —, 186—, and hereto annexed.

Sitting granted for — the — day of —, 186—, at — o'clock in the — noon.

—, Registrar.

No. 175.

Summons to Party to be examined.

"The Bankruptcy Act, 1861."

In pursuance of a request to this court from the sheriff of the county of —, dated at — the — day of —, 186—, and made in the matter of the sequestrated estate of —, at —, in the parish of —, and county of —, and in pursuance of the provisions of "The Bankruptcy (Scotland) Act, 1856," and of "The Bankruptcy Act, 1861."

These are to will and require you to whom this summons is directed personally to be and appear before —, esquire, a commissioner of the said court, acting under the said request, on — the — day of —, at — of the clock in the forenoon precisely, at the court of bankruptcy, in Basinghall-street, London, then and there to be examined by virtue of the statutes in such case made and provided, and to produce the several documents specified in the schedule hereto annexed. And hereof you are not to fail at your peril.

Given under my hand and the seal of the court of bankruptcy, this — day of —, 186—.

To —.

—, Registrar.

F.

4 U

No. 176.

Request for Examination by a District Court of Bankruptcy.

"The Bankruptcy Act, 1861."

In the Court of Bankruptcy for the — district.

In the matter of *A. B.*, of —, a bankrupt.

The — day of —, 186—.

B. L. C. A. 1849,
sect. 21.

Whereas Mr. —, of counsel [*or* solicitor] on behalf of the assignees of the estate of the above-named bankrupt, this day applied to me the commissioner acting in the prosecution of the adjudication of the said bankruptcy, that I would, pursuant to the 21st section of "The Bankrupt Law Consolidation Act, 1849," request that one of the commissioners of her majesty's court of bankruptcy in London would examine —, of —, and —, of —, being persons whom the assignees believe to be capable of giving information relating to the estate of the said bankrupt: Now, upon hearing what was alleged by the said Mr. —, I request that the said — and the said — [*or* their clerk] may be examined before the court of bankruptcy in London accordingly.

A. B., Commissioner.
(Seal.)

No. 177.

General Form of Petition.

In Bankruptcy.

In the matter of *A. B.*, a bankrupt.

To the Right Honorable the Lord High Chancellor of Great Britain.

The humble petition of *C. D.*, of —.

[This form is not
now used, except in
exceptional cases,
as all appeals are
by way of motion.]

Showeth,

That [*statement*].

Your petitioner most humbly prays your lordship that [*stating the relief to which your petitioner is advised he is entitled to*], or that your lordship will make such other order in the premises as to your lordship shall seem meet.

And your petitioner, &c.

Signed by the said *C. D.* in the presence
of me, *L. M.*, solicitor [*or* agent] for
the said petitioner in the matter of
this petition.

Fiat thereon.

In Bankruptcy.

The — day of —, 186—.

Let all parties concerned, or their agents, attend this court hereon on —, the
— day of — next; hereof give notice forthwith.

By the Court.

No. 178.

Memorandum of Commissioner as to Deposit for Costs.

In Bankruptcy, Basinghall-street, London.

The — day of —, 186—.

[G. O., 19th Oct.
1852, r. 29.]

Re *A. B.*, against whom a petition for adjudication of bankruptcy was duly filed on the — day of —, 186—. Upon application this day made to me by Mr. *T. L.*, solicitor to *C. D.*, of —, it being stated that the said *C. D.* is about to present a petition of appeal to the lords justices against an order made by me in this matter, and bearing date the — day of —, 186—, I do order that the sum of £— be deposited by the said *C. D.* upon the presentation of the said petition of appeal.

J. M., Registrar.*E. H.*, Commissioner.

No. 179.

Certificate of Chief Registrar on Lodgment of Deposit.

Chief Registrar's Office, Court of Bankruptcy.

The — day of —, 186—.

Re *A. B.*, Ex parte *C. D.*

I certify that Messrs. — and —, the solicitors for the appellant, have deposited with me £— pursuant to the order of Mr. Commissioner —, to satisfy, so far as the same may extend, any costs that the appellant may be ordered to pay.

J. F. Miller, Chief Registrar.

No. 180.

Affidavit to verify the Petition.

In Bankruptcy.

In the matter of *A. B.*, a bankrupt.

We, *J. N.*, of —, and *W. T.*, of —, solicitor to the petition for adjudication of bankruptcy against the said *A. B.*, severally make oath and say: [And first, I, *J. N.*, for myself, say, that, &c., And I, *W. T.*, for myself, say, that, &c., And we, these deponents, *J. N.* and *W. T.*, further say, that, &c.]

Sworn at the —, this — day of —, } *J. N.*
186—, before me, —. } *W. T.*

No. 181.

Affidavit of Service of the Petition.

In the matter of *A. B.*, a bankrupt.

W. R., of —, clerk to *W. T.*, of —, solicitor to the said *A. B.*, maketh oath and saith, that he, this deponent, did on the — day of — now last past, serve *E. D.*, of —, and *W. H.*, of —, solicitor, with a petition, preferred by *A. B.*, of —, against whom a petition for adjudication of bankruptcy hath been filed, and is now in prosecution, unto the lords justices of appeal in chancery, with the order of the said court thereon, bearing date the — of —, 186—: Whereby it was ordered that all parties concerned, or their agents, were to attend the said court thereon, on — the — day of — next, and notice thereof to be given forthwith, by delivering personally to the said *E. D.* and *W. H.* respectively true copies of the said petition and order thereon, and at the same time showing them respectively the said original petition and order thereon, and this deponent further saith that the said *E. D.* is the petitioning creditor and sole assignee under a petition for adjudication of bankruptcy filed and now in prosecution against the said *A. B.*, and the said *W. H.* is the attorney or solicitor of the said *E. D.* in the matter of and prosecuting the said petition, as this deponent hath been informed and verily believes.

Sworn at, &c., before me, —.

W. R.

No. 182.

Petition to annul where Bankrupt has not committed an Act of Bankruptcy.

In Bankruptcy.

In the matter of *A. B.*, a bankrupt.

To the Right Honorable the Lords Justices of Appeal in Chancery.

The humble petition of the said bankrupt,

Showeth,

That on the — day of — a petition for adjudication of bankruptcy was filed in her majesty's court of bankruptcy against your petitioner, by *C. D.*, of —.

That on the — day of — your petitioner was under the said petition adjudged and declared a bankrupt, and *C. L.*, of —, was appointed the official assignee of the estate and effects of your petitioner under the said bankruptcy.

That your petitioner, having been served with a duplicate of such adjudication of bankruptcy, did on the — day of — show cause against such adjudication, alleging as cause, that your petitioner had not committed any act of bankruptcy, but the court thereupon ordered that the said adjudication should be affirmed, and the same was affirmed accordingly.

That your petitioner hath not at any time committed any act of bankruptcy within the true intent and meaning of the bankrupt laws.

Your petitioner therefore humbly prays that the said adjudication should be annulled, and that the said petition be dismissed, and that the said *C. D.* may pay the costs of this application and incident thereto, or that your lordships will make such other order in the premises as seem meet, and your petitioner will ever pray, &c.

(Signed, &c.)

A. B.

Form of Notice by Petitioning Creditor to Bankrupt, requisite where the Court of Appeal shall direct the Question of Fact to be tried, and the Petitioning Creditor intends, on Trial of the Issue, to rely upon any other Acts of Bankruptcy than those sworn to in support of the Adjudication.

In the [state the court in which the issue is to be tried].

Between *C. D.*, plaintiff,
and
A. B., defendant.

Take notice, that, on the trial of the issue, the plaintiff intends to insist that the defendant did, on or before the filing the petition for adjudication of bankruptcy against him, commit an act or acts of bankruptcy, by beginning to keep house, and by departing from his dwelling-house, and to prove the same as follows: *J. W.*, a witness to prove the same, being then a clerk to the said *A. B.*, did, on the — day of —, 186—, receive orders from the said *A. B.*, &c. [here state the facts relied upon].

No. 183.

Petition to annul an Adjudication after a Trial at Law.

In the bankruptcy of *A. B.*, of —.

To the Lords Justices of the Court of Appeal in Chancery.
In Bankruptcy.

The humble petition of the said *A. B.*

Showeth,

That a petition in bankruptcy, bearing date the — day of —, 186—, was filed by *C. D.*, of —, in her majesty's court of bankruptcy.

That your petitioner was admitted bankrupt upon such petition by the commissioner of the said court, authorized to proceed in the said fiat.

That on the — day of — last your petitioner did duly surrender himself to the said commissioner.

That although the said commissioner declared your petitioner a bankrupt, yet, in fact, your petitioner never was a trader within the true intent and meaning of the bankrupt laws.

That on or about — your petitioner commenced an action of trover against *J. G.* and *C. J.*, the assignees chosen and appointed under the said adjudication to recover certain parts of the property which they had seized as his assignees, under pretence of the said adjudication, which said action came to be tried at the assizes at —, in the month of —, 186—, when, the said assignees not being able to prove your petitioner a trader within the meaning of the bankrupt laws, a verdict was found for your petitioner for the value of the articles so seized by the said assignees.

Your petitioner therefore humbly prays that your lordships will be pleased to order the said adjudication to be annulled at the expense of the said *C. D.*, and that the said *C. D.* may pay the costs of this application, or that your lordships will be pleased to make such other order as to your lordships shall seem meet.

And your petitioner will ever pray, &c.

No. 184.

Form of an Affidavit of Debt.

In the Queen's Bench.

C. D., of —, maketh oath and saith, that *A. B.*, of —, is justly and truly indebted unto this deponent in the sum of £ — of lawful money of Great Britain, for

goods sold and delivered by him, this deponent, to the said *A. B.*; and this deponent further saith, that the said *A. B.* is now, as this deponent verily believes, a trader within the description of "The Bankrupt Law Consolidation Act, 1849," and that the said *A. B.* has privilege of parliament as one of the members of the honorable house of commons.

For the summons required by 12 & 13 Vict. c. 106, s. 77, see Act of 1849, Sched. E.

No. 185.

Deposition of the Act of Bankruptcy, when the Act of Bankruptcy is under the 12 & 13 Vict. c. 106, s. 77, the Trader having Privilege of Parliament.

In the Court of Bankruptcy.

The — day of —, 186—.

In the matter of *A. B.*, &c. [*as before*].

C. D., of —, and *E. F.*, of —, being severally sworn and examined at the time and place above mentioned, severally make oath and say: And, first, this examinant *C. D.*, for himself saith, that on or about the — day of —, now last passed, he this examinant, by virtue of "The Bankrupt Law Consolidation Act, 1849," did make an affidavit in her majesty's court of queen's bench at Westminster, that the said *A. B.* was justly and truly indebted unto him this examinant in the sum of £—, and that the said *A. B.* was, as this examinant verily believed, a trader within the description of the said statute: And this examinant further saith, that the said *A. B.* hath not paid, secured or compounded the said debt, nor hath he entered into any bond to pay such sum as should be recovered in the action, in pursuance of and according to the directions of the said act of parliament, to the knowledge or belief of this examinant: And this examinant *E. F.*, for himself saith, that he did, on the said — day of — last, file the said affidavit so sworn by this other examinant *C. D.* as aforesaid in the said court of queen's bench: And that he did, on the — day of — last, sue out of the same court of queen's bench a summons against the said *A. B.*, and on the next day, being the — day of — last, did serve him the said *A. B.* personally with the copy thereof: And this examinant *E. F.* further saith, that the said *A. B.* was at the time of the filing of the said affidavit, and of the suing out and serving of the said summons, and still is, a trader having privilege of parliament as this examinant hath been informed and verily believes.

No. 186.

Form of Commissioner's Certificate to the Speaker of the House of Commons, under Statute 52 Geo. 3, c. 144, s. 2.

To the Right Honorable the Speaker of the House of Commons.

At the Court of Commissioners of Bankrupt.

This — day of —, 186—.

I, whose name is hereunto subscribed, being one of the commissioners of her majesty's court of bankruptcy, authorized to act under a petition for adjudication of bankruptcy filed against *A. B.*, of —, in the —, do hereby certify to the right honorable the speaker of the house of commons, that the said petition for adjudication of bankruptcy was filed on the — day of — last, against the said *A. B.*, in her majesty's court of bankruptcy, under which the said *A. B.* was duly found and declared a bankrupt, and that although twelve calendar months have expired since the filing of the said petition, the adjudication thereunder hath not been annulled, nor have the debts under the same been satisfied according to the ordinances and provisions of an act of parliament made and passed in the fifty-second year of the reign of his late majesty king George the third, intituled "An Act to suspend and finally vacate the Seats of Members of the House of Commons who shall become Bankrupts, and who shall not pay their Debts in full within a limited Time."

G. H., Commissioner.

COUNTY COURT BANKRUPTCY ORDERS, 1863.

GENERAL ORDERS for regulating the Practice and Procedure of the County Courts under "The Bankruptcy Act, 1861."

IN pursuance of the powers vested in us by the nomination of the lord chancellor under the provisions of "The Bankruptcy Act, 1861," we, John Bury Dasent, Douglas Denon Heath, John Worlledge, Rupert Alfred Kettle and William Furner, have framed the following general orders, and do certify the same to the lord chancellor accordingly this 1st day of July, 1863.

1. The general orders now in force in the county courts in matters of bankruptcy, which were framed under the provisions of section 46 of "The Bankruptcy Act, 1861," and dated the 12th October, 1861, shall, on and from the 1st day of January, 1864, be rescinded, and in lieu thereof the following shall on and from such day be the general orders in force and used in the said courts in matters of bankruptcy.

Sittings of the Court.

Place of sitting
of county court.

2. The place of sitting of each county court in matters of bankruptcy shall be the place at which the court now holds or may hereafter hold its sittings for the general business of the court, under the provisions of the act 9 & 10 Vict. c. 95, or of any act amending or extending the provisions of the same.

Times of sitting
of county court.

3. The times of the sitting of each county court in matters of bankruptcy shall be those appointed for the transaction of the general business of the court, unless the judge of any such court shall otherwise order, and shall appoint a special day or days for a sitting of the court in matters of bankruptcy.

Proceedings.

Forms of pro-
ceedings.

4. In matters of bankruptcy in the county courts the proceedings shall be in the several forms set forth in the schedule attached to these orders, and where forms for any proceeding in such matters are not provided in the schedule, the forms required may be framed, using as guides those so provided.

Uniform size of
forms of proceed-
ings.

5. All proceedings in the court (except notices to creditors) shall be written or printed on parchment or paper of the size hitherto used in bankruptcy, that is to say, on sheets of sixteen inches in length and ten inches in breadth; but no objection shall be taken to any proof of debt, affidavit or letter of attorney on account of its being written or printed on other sized paper.

Seal of court to
be affixed to pro-
ceedings.

6. All proceedings shall be sealed with the seal of the court and remain of record in the court, so as to form a complete record of each bankruptcy, and they shall not be removed for any purpose, except for the use of the officers of the court or by special direction of the judge or registrar. No minute book need therefore be kept.

Office copies.

7. All office copies of petitions, proceedings, books, papers and writings, or any parts thereof, provided for any bankrupt, or for any debtor or creditor of a bankrupt, or attorney of any such bankrupt, debtor or creditor, shall be charged and paid for at the rate directed by the 53rd section of "The Bankrupt Law Consolidation Act, 1849," with respect to the office copies therein mentioned;

B. L. C. A. 1849,
sect. 53.

County court
orders of 12th
Oct. 1861, re-
scinded from
1st Jan. 1864.

and such copies shall be made by the registrar forthwith after application for the same.

8. In lieu of attaching a copy of the London Gazette to the proceedings in each bankruptcy or other matter, the registrar shall make a memorandum of the advertisement in the London Gazette, and of the date thereof, with proper reference to the file to facilitate search; and one copy of every London Gazette and of each local newspaper in which any notice in any matter of bankruptcy in such court is inserted shall be handed by the high bailiff to the registrar, who shall file the same.

Record of advertisements in Gazette.

9. No affidavit shall be filed unless it is properly intitled in the court and matter in which the same is to be used; and after an affidavit is left with a registrar to be filed it is not to be delivered to any person whatever, except by order of the court.

Affidavits.

10. All notices and other proceedings, for the delivery of which no special mode is prescribed, shall be sent by prepaid post letter to the last known address of the person to be served therewith.

Notices.

Registrar to sit in Chambers.

11. The following matters shall, unless the court shall in any case otherwise direct or allow, be heard and disposed of by the registrar in chambers, that is to say:—

Business to be disposed of by registrar at chambers.
B. A. 1861, sect. 52.

Private examinations under section 58 of "The Bankruptcy Act, 1861" (p. 1198).

Petitions for adjudication of bankruptcy and granting protection. (B. A. 1861, s. 94, p. 1203.)

Making orders under sections either 40 or 124 of "The Bankrupt Law Consolidation Act, 1849," or section 137 of "The Bankruptcy Act, 1861."

Presiding at first or any other meeting of creditors. (B. A. 1861, s. 109, p. 1206.)

Swearing affidavits. (B. A. 1861, s. 207, p. 1221.)

Giving requisite directions for notices and advertisements, &c.

Auditing and passing accounts of assignees. (B. A. 1861, s. 129, p. 1209.)

Proceedings for declaration and payment of dividends. (B. A. 1861, s. 174, p. 1215.)

Confirming and giving certificate of appointment of a creditors' assignee. (B. A. 1861, s. 123, p. 1208.)

Any of the following matters, when uncontested, whether before or after the appointment of a creditors' assignee.

Admitting, expunging or reducing proofs or claims (B. L. C. A. 1849, ss. 155, 164, and B. A. 1861, ss. 144, 146); ordering payment of rates, taxes, salary or wages, or sum in respect of apprentice fee (B. L. C. A. 1849, ss. 166, 168, 169, 170, and B. A. 1861, s. 156); ordering amendments or inspection or copies or extracts of any proceedings (Order 73); and taking mortgagee's accounts, and giving leave to mortgagee to bid (B. L. C. A. 1849, s. 184, and B. A. 1861, s. 132).

Proceedings up to First Meeting.

12. Every petition for adjudication of bankruptcy shall be written or printed on parchment or paper, and shall be in the form set forth in the schedule, and, except so far as may be necessary to adapt the printed form to the circumstances of the particular case, no alterations, interlineations or erasures shall be permitted without the leave of the court or a registrar thereof, and every such petition shall be attested by the solicitor to the bankrupt.

Form of petition.
B. A. 1861, sect. 87.
Forms 2, 6, 30.

13. Upon every such petition the registrar, or in his absence his clerk, shall note the precise time of the filing of such petition.

Time of filing petition.

14. Before adjudication of bankruptcy upon any petition, the petitioner shall state on oath, by affidavit, that the several allegations in the petition are true.

Form 4.

15. No adjudication shall be made on the petition of a debtor for adjudication of bankruptcy against himself in the absence of the petitioner, unless the petitioner is in custody, or the registrar shall by special order dispense with his attendance.

Adjudication in absence of petitioner.

First meeting of
creditors.

B. A. 1861,
sects. 109, 110,
116.

Three forms of
adjudication to
be filed.

Protection.

Forms 5, 8, 17, 22.

Time of holding
first meeting.

Declaration by
bankrupt.
B. A. 1861,
sect. 211.
Form 35.

Time within
which a debtor
petitioning for
adjudication
against himself
must file the
statement re-
quired by B. A.
1861, sect. 93.
Order 34.
Forms 32, 34.

Estate paper.

Form 33.

Duplicate state-
ment under B. A.
1861, sect. 93, to
be given to high
bailiff.

Form 44.

High bailiff to act
under registrar as
official assignee.
B. A. 1861, sect.
108.

16. After adjudication the court or registrar shall, without any application by the bankrupt, appoint a sitting for the bankrupt to surrender and conform, such sitting to be also a public meeting of creditors for such proceedings as may be taken under the 109th, 110th and 116th sections of "The Bankruptcy Act, 1861," and such adjudication and meeting shall be advertised in the London Gazette and one local newspaper only, within seven days after the date of adjudication. The adjudication must be dated of the day on which it is made.

17. The solicitor presenting the petition shall provide and fill up three forms of adjudication, one to be delivered to the bankrupt, one to be filed in court, and the third for transmission to the chief registrar by the registrar of the court.

18. In the adjudication to be made upon a petition, the court or registrar shall grant the bankrupt protection from arrest; and shall endorse thereon a notice to the bankrupt of the time and place of holding the sitting at which he is to surrender and conform as aforesaid; and the registrar shall deliver to the bankrupt a duplicate of the adjudication, and shall make on the adjudication to be filed a note that he has so delivered the duplicate of the adjudication to the bankrupt: provided that where the petitioner is not present, the duplicate of the adjudication shall be served on the bankrupt by the high bailiff.

19. Where adjudication of bankruptcy is made against a debtor on his own petition, or against a debtor in gaol without petition, the first meeting of creditors shall be holden within twenty-one days from the day of such adjudication, unless for some special reason it is desirable that it should be held at a greater interval of time from such day.

20. Forthwith after adjudication the bankrupt shall be required to sign the declaration, that he will make true answer to all questions under section 211 of "The Bankruptcy Act, 1861," and no further declaration need be signed; but the bankrupt may have administered to him a *vivâ voce* oath on any subsequent examination.

21. The statement required to be filed in court under section 93 of "The Bankruptcy Act, 1861," by every debtor petitioning for adjudication of bankruptcy against himself, and verified by the oath of the petitioner, shall be so filed in duplicate and verified by affidavit by such debtor, within three days after filing his petition, and shall be in the form specified in the schedule to these orders annexed, and if such statement be not so filed and verified the adjudication shall be annulled, unless the court or registrar shall be of opinion that it will be for the benefit of the creditors that it should not be annulled, and thereupon further time for the filing of the statement may be allowed.

22. That every petitioner shall deliver with the statement of his debts under section 93 of "The Bankruptcy Act, 1861," an account in writing, in the form set forth in the schedule, signed by the petitioner, of all his books of account and vouchers, and of the names and residences of his debtors, and the amount of their debts, and of all his real and personal estate and effects (including money) then in his possession or control, or in the possession or control of any other person by his authority or in trust for him, and the place or places where the same then are believed to be, and whether the same are liable for rent or any other charge, and to whom, by name, and the particulars of the demand, in order that such property may be duly ascertained and given up to the registrar or high bailiff, and that the said account shall be signed and delivered in duplicate, and shall be called the "Estate Paper." The bankrupt shall at the same time deliver to the registrar his books of accounts and vouchers.

23. Forthwith after the filing in court of the statement of a person presenting a petition for adjudication of bankruptcy against himself, in pursuance of section 93 of "The Bankruptcy Act, 1861," the registrar shall give the duplicate statement to the high bailiff, who shall thereupon transmit by post a notice, in the form set forth in the schedule, to each creditor named in such statement, who shall be resident within the united kingdom, informing him of the fact of such petition having been presented, and of the time and place fixed for the first meeting of creditors.

24. The registrar, in performing the duty required of an official assignee by section 108 of "The Bankruptcy Act, 1861," or in acting under any order made under section 40 of "The Bankrupt Law Consolidation Act, 1849," shall act by the high bailiff of the court, who shall in all respects, but subject to the direc-

tions of the court in any particular case, observe the written directions of the registrar in taking, selling or retaining possession of the bankrupt's estate, and shall act as his deputy; and after the appointment of the creditors' assignee, the high bailiff shall act under his written instructions in taking, keeping or discontinuing possession, and at any time that he may be required so to do, by the registrar or creditors' assignee, shall render an account of what he has done.

B. L. C. A. 1849,
sect. 40.

25. It shall be the duty of the high bailiff to make an inventory of the bankrupt's estate in cases where such inventory shall be deemed requisite by the registrar. No broker shall be employed for the purpose. Where such inventory has not been made prior to the choice of creditors' assignee, the inventory shall only be made upon an express direction in writing from the creditors' assignee.

Inventory.
Form 37.

26. It shall be the duty of the high bailiff to keep the books lettered "F. and G." in the schedule, and attend at all meetings of the court in matters of bankruptcy, and further, unless it is otherwise by these orders provided, to serve all orders, summonses (including summonses to witnesses) and notices, to execute all warrants and processes, to prepare and cause to be inserted in the London Gazette and newspapers all advertisements and notices whatsoever which are to be so inserted, and to do and perform all other things which are required to be done or performed by a messenger of the court of bankruptcy.

High bailiff to keep books, to serve summonses, &c., and to prepare advertisements.
Forms 90—97.

27. The registrar shall, in all cases, immediately after the filing of the estate paper, apply for the payment of all the debts mentioned therein, and if any of the same are not paid within fourteen days, or a satisfactory arrangement for payment made, he shall make a second application where the debt shall not exceed ten pounds, and also where it does exceed ten pounds if no creditors' assignee have been chosen: and where such two applications are unsuccessful he may, when sole assignee, by leave of the judge, sue for any debt due to the bankrupt.

Application for debts due to estate.
Forms 42, 43.

28. Where the holding possession of the property of the bankrupt taken possession of under section 108 of "The Bankruptcy Act, 1861," until the choice of assignees would, in the judgment of the court or registrar, be prejudicial to the bankrupt's estate, then the court or registrar shall order the sale or other disposition of such property.

Holding possession.
B. A. 1861,
sect. 108.

Pauper Petitions.

29. A debtor desirous of petitioning for an adjudication of bankruptcy against himself *in formâ pauperis* shall petition that county court within the district of which he shall be confined.

Court to be petitioned.
Form 6.

30. After the filing of a petition for an adjudication of bankruptcy by a debtor *in formâ pauperis*, the registrar shall give notice to the execution and detaining creditors of the petitioner in the form in the schedule annexed.

Notice to detaining creditor.
Form 15.

Gaol Adjudications.

31. The notice of an order for a registrar to attend at a gaol for the examination of prisoners in pursuance of section 101 of "The Bankruptcy Act, 1861," required to be given to the gaoler and to the execution and detaining creditors of such prisoners, shall be sent by post by the registrar of the court, under cover to their respective solicitors, and such notice shall be in the form set forth in the schedule.

Notice of attendance of registrar at gaol.
B. A. 1861,
sect. 101.
Form 20.

32. On the registrar attending at the gaol he is to examine, on the day on which he so attends, and so on from day to day, those prisoners named in the gaoler's return who shall have been in prison fourteen days at least, exclusive of the day on which they were first imprisoned.

What prisoners are to be examined.

33. In acting under section 101 of "The Bankruptcy Act, 1861," the registrar, if he make adjudication, shall direct the proceedings under the same to be prosecuted in that court of bankruptcy or county court to which the bankrupt could have presented his petition, had he not been in custody.

Transfer of proceedings.
B. A. 1861,
sect. 101.
Form 12.

34. Where an adjudication is made under the 99th or the 101st sections of "The Bankruptcy Act, 1861," the bankrupt shall file in the court in which the bankruptcy is to be prosecuted the statement required by section 93 of the said act, and the estate paper required by these orders, within such time as the court or registrar shall direct, and the court or registrar may grant the bankrupt protection from time to time for such number of days, for the purpose of filing the

Statement of creditors where adjudication made under
B. A. 1861, sects. 99, 101.
Form 32.

statement and the estate paper, as the court or registrar may from time to time think fit to grant.

Transfer of Proceedings.

Transfer of proceedings to authorize court to which transfer made to proceed. B. A. 1861, sect. 94.

35. Where the proceedings in any bankruptcy are transferred from the court in which the petition was filed, under the provisions of "The Bankruptcy Act, 1861," to any other court, the registrar of the first court shall send by post the duplicate adjudication and all the other proceedings to the registrar of the court to which the proceedings are transferred; and the receipt of such proceedings shall be considered to authorize the latter court to continue such proceedings, without any further order for transferring the proceedings than is contained in the duplicate adjudication.

Proceedings under B. A. 1861, sects. 88, 101, 109.

36. The receipt of the proceedings in any adjudication transferred from one court to another under the provisions of "The Bankruptcy Act, 1861," shall similarly be considered to authorize the court to proceed without further order.

B. A. 1861, sects. 88, 109.

37. These orders shall apply to all proceedings transferred to a county court either under section 88 or 109 of "The Bankruptcy Act, 1861."

First and other Meetings of Creditors.

Letter of attorney to act for creditor.

Forms 52, 53.

38. Every creditor may, by letter of attorney, verified by affidavit, according to the form set forth in the schedule hereunto annexed, authorize the registrar or any other person to represent him at any meeting of creditors, and to vote for him on any question submitted to the creditors at such meeting or on any adjournment thereof, and also in the choice of creditors' assignee, and also at any such meeting or adjourned meeting to accept, on his behalf, of the appointment of creditors' assignee.

When creditor "present."

39. No creditor shall be considered as "present" or "represented" at any meeting had in the matter of any bankruptcy, or of any other proceeding, until he shall have proved his debt.

B. A. 1861, sect. 110.

Forms 61, 62.

40. Where at the first meeting of creditors a resolution is come to under section 110 of "The Bankruptcy Act, 1861," and no creditors' assignee shall have been appointed at that meeting, the notice of the adjournment of the meeting shall be given by the registrar; but if a creditors' assignee is chosen at such meeting, the notice shall be given by the creditors' assignee.

Resolution to wind-up under deed. B. A. 1861, sect. 185.

41. When any resolution shall have been come to for the winding-up of a bankrupt's estate under a deed of arrangement, composition, or otherwise, under the provisions of section 185 of "The Bankruptcy Act, 1861," the registrar shall file his report with the proceedings within four days, and the application to be made for confirming the resolution by the bankrupt or any creditor nominated in that behalf at the meeting shall be made at the next sitting of the court, which shall be held after the meeting at which the resolution was passed.

Notice of appointment for last examination.

B. A. 1861, sects. 140, 141.

Forms 5, 8, 17, 22.

42. At the first meeting the registrar shall endorse on the duplicate adjudication held by the bankrupt a notice to the bankrupt of the day, hour and place on and at which he must surrender for the passing of his last examination, and make application for an order of discharge and also a notice of the statement of accounts he is required to file ten days at least before the day so appointed. The registrar shall renew the bankrupt's protection to the day so appointed, and such protection may be renewed from time to time as the court or registrar shall think fit, until the day on which the order of discharge is to be drawn up.

Accounts to be filed before last Examination.

Account to be filed under B. A. 1861, sect. 141. Form 64.

43. The statement of accounts to be filed under section 141 of "The Bankruptcy Act, 1861," and these orders, shall be an account showing all monies received or paid by the bankrupt during the six months preceding the filing of his petition, and of the monies in his possession on the day on which the account commences; and where at any time since the day on which the earliest debt, still unpaid, was contracted, any money or other property whatever has gone away from the bankrupt by gift, sale, assignment, mortgage, distress, execution, or by any payment other than in the ordinary course of trade or ordinary

domestic expenditure, particulars of such transaction, with dates and items, must be given, and such statement must be duly verified on oath, by affidavit, before it is filed, and such account shall be filed in duplicate.

44. The registrar of a county court shall assist a bankrupt in preparing the statement of his accounts, by giving him access, at the office of the court, to his books and papers, and by furnishing him with all information necessary to enable him to comply, in such statement, with the requirements of the court.

Registrar to assist bankrupt in preparing account.
B. A. 1861, sect. 143.

45. Notice of any sale to be made by auction or tender under the provisions of section 137 of "The Bankruptcy Act, 1861," shall be given in one local newspaper seven clear days at least before the sale shall be held.

Notice of sale under B. A. 1861, sect. 137.
Form 40.

46. Where it appears that the debts of the bankrupt exceed in amount 300*l.*, the bankruptcy shall be proceeded with, if the judge is satisfied that the bankrupt had a reasonable and *bonâ fide* belief that such debts did not exceed in amount 300*l.*, but if he shall not be so satisfied the adjudication shall be annulled.

Where debts of bankrupt exceed 300*l.*

Last Examination.

47. Before a bankrupt shall be allowed to pass his last examination he shall deposit with the registrar of the court the stamped parchment on which the order of discharge, when granted, is to be drawn up, or the sum of one pound and sixpence for the procuring of the same, and also the necessary sum for the fees and costs of advertising the discharge; and should such discharge not be granted the stamp or money, as the case may be, shall be returned after the expiration of the thirty days, within which the bankrupt may appeal from the decision of the court, should no appeal be made; and, if an appeal be made, then after the decision of the court of appeal shall have been given, should it be against the bankrupt.

Bankrupt to deposit cost of stamp on order of discharge.
B. A. 1861, sched. B.

Dividends.

48. If, after due notice has been given of the calling of a meeting of creditors for the purpose of declaring a dividend, according to the provisions of section 174 of "The Bankruptcy Act, 1861," such meeting cannot be held in consequence of no creditor attending at the time and place mentioned in the notice, the creditors' assignee, if one shall have been chosen and be present, and, if not, the registrar shall then and there declare what part of the net produce of the estate shall be divided amongst the creditors who have proved their debts.

Where no creditors attend dividend meeting.
B. A. 1861, sect. 174.
Form 85.

49. The registrar, where no creditors' assignee is appointed, shall, when a dividend has been declared under section 174 of "The Bankruptcy Act, 1861," pay the dividends in cash or by cheque.

Payment of dividends.

50. Where a creditors' assignee is appointed, the sum which at the audit shall be appropriated for the payment of a dividend shall be forthwith paid over by the creditors' assignee to the registrar, who shall receive the same, enter, account for and pay out of the same the dividends to the respective creditors in the same manner as he would have done if such sum had come to his hands without the intervention of the creditors' assignee.

Payment of dividend where a creditors' assignee has been appointed.

Accounts to be kept and examined.

51. The treasurer of the county court in which any bankrupt's estate shall be administered shall, at the audits of the accounts of such court, examine the accounts in all matters relating to such estate, and the receipts of the several creditors for any dividend which may have been declared, and shall make a report to the judge of the court, should he consider that there is any matter with which he should be made acquainted.

Treasurer to audit accounts.

52. The registrar of every court should keep the books mentioned and lettered "A., B., C., D. and E." in the schedule, and according to the forms therein given.

Forms of books.

53. The registrar shall furnish to the treasurer by the 31st of March in every year, a list of the balances in the estate ledger standing in such ledger on the 31st of December in the preceding year; and the treasurer shall check the list in such way as he may deem necessary, so as to satisfy himself that the receipts have been duly entered and accounted for in the cash book and posted into the ledger.

Ledger audit.

Entry of fee.

54. The registrar shall enter all the fees received by him in the registrar's fee book, and he shall transmit a summary of such fees to the treasurer within seven days after the 31st of December in each year, for the year ended on that day.

Audit of fees.

55. The treasurer, in examining these books, shall ascertain that the fees taken are those authorized by general orders made under the authority of section 45 of "The Bankruptcy Act, 1861."

Balances in registrar's hands.

56. The registrar shall pay over to the treasurer from time to time, as he may be required, the balance of bankruptcy monies in his hands, and shall include the sums so paid over by him to the treasurer in the yearly return directed to be made to the commissioners of audit, of monies paid by him to the treasurer.

Audit of costs of sale.

57. The treasurer shall ascertain that the charges for the sale of a bankrupt's effects have been rightly made, according to the charges directed to be taken by general orders made under the authority of section 45 of "The Bankruptcy Act, 1861."

Proof of separate Debts.

Proof of separate debts.

58. Any separate creditor of any bankrupt shall be at liberty to prove his debts under any adjudication of bankruptcy made against such bankrupt jointly with any other person or persons. And, under every such adjudication, distinct accounts shall be kept of the joint estate and also of the separate estate or estates of each bankrupt, and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors. And in case there shall be an overplus of the separate estate, such overplus shall be carried to the account of the joint estate. And in case there shall be an overplus of the joint estate, such overplus shall be carried to the account of the separate estates of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate. And the cost of taking such accounts shall be paid out of the joint and separate estates respectively as the court shall direct.

Taking Accounts of Property mortgaged.

Accounts of property mortgaged to be taken.

B. L. C. A. 1849, sect. 184.

59. Upon application by any person claiming to be a mortgagee of, or to have security over any part of the bankrupt's estate, or effects, real or personal (whether such mortgage or security shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature), the court shall proceed to inquire whether such person is such mortgagee or is entitled to such security, and for what consideration and under what circumstances such mortgage or security shall have been given, and if it shall be found that such person is such mortgagee, or is entitled to such security, and no sufficient objection shall appear to the title of such person to the sum claimed by him under such mortgage or security, the court shall then proceed to take an account of the principal, interest and costs due upon such mortgage or security, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use, in respect of such mortgage or security, in case he shall have been in possession of the property over which the mortgage or security shall extend or any part thereof; and the court shall then cause notice to be given in the London Gazette, and in such other of the public papers as it shall think fit, when and where and by whom and in what way the said property, or the interest therein so mortgaged, or over which the security shall so extend, is to be sold, and such sale shall be made accordingly, and the assignees (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any mortgagee to make such application.

Notice of sale.

Conveyance, parties to.

60. All proper parties shall join in the conveyance to the purchaser as the court shall direct.

Application of proceeds of sale.

61. The monies to arise from such sale shall be applied in the first place in payment of the costs, charges and expenses of the assignees of and occasioned by the application to the court, and of and attending such sale, and then in payment and satisfaction of what shall be found due to such mortgagee, or person so having security, for principal, interest and costs, and the surplus of the said monies (if any) shall be paid to the assignees. But in case the monies to arise from such sale shall be insufficient to pay and satisfy what shall be so

found due to such mortgagee or person so having security, then he shall be admitted a creditor for such deficiency, and shall receive the dividends thereon rateably with the other creditors, but not so as to disturb any dividend or dividends then already made.

62. For the better making of such inquiry and taking of such account, and for making a title to the purchaser, all parties to the transaction or persons capable of giving information may be examined by the court on oath upon interrogatories or otherwise as it shall think fit, and shall produce before the court upon oath all deeds, papers and writings in their respective custody or power relating to the estate or effects of the bankrupt, as the court shall direct.

Parties to transaction to be examined.

Motion.

63. All applications to the court shall (unless the court shall in any particular case otherwise direct) be by way of motion, and, if required by the court, shall be supported by affidavit; but no order affecting any person other than the applicant shall be made unless upon the consent of such person duly shown to the court, or upon proof that notice of the intended motion has been served upon the person to be affected thereby, four clear days at least before the day named in such notice as the day when the motion is to be made: Provided, however, that the court may, if it shall think fit, in any case where the person to be affected by the order shall not have been duly served with a notice of the motion, grant a rule calling upon such person to be affected by the motion to show cause, at a day to be named by the court in such rule, why an order should not be made as required.

Motions to be supported by affidavit.

Service of notice of motion.

Rule where notice not served.

64. Every rule to show cause shall be served upon the party or parties to be affected thereby, four clear days at the least before the day appointed for showing cause by serving the same on the person named in the rule, or by leaving the same at his place of abode or business.

Service of rule.

Appeals.

65. At or before the time of entering an appeal against a decision or order of the court, the party intending to appeal shall (in every case not otherwise specially provided for) deposit with the registrar such sum, not being less than ten pounds and not exceeding forty pounds, as the court shall direct, to satisfy, so far as the same may extend, any costs that the appellant may be ordered to pay, and in the absence of any directions of the court as to the amount of deposit, the sum of twenty pounds shall be so deposited. If it shall appear that there are several respondents in separate interests, the court, if it shall think fit, may order a separate deposit as to every such respondent.

Appeal, deposit on.

B. L. C. A. 1849, sect. 12, and 14 & 16 Vict. c. 83, s. 7.

66. At the time of entering an appeal against the judgment of the court for the allowance of an order of discharge, or for the refusal or the withholding the same, notice thereof in writing stating the grounds on which the party appeals shall be left with the registrar, who shall forthwith enter thereon the time and nature of every such appeal, and shall afterwards file such notice.

Notice of appeal to be given.

67. All affidavits to be made in support of petitions of appeal, against the allowance, refusal or withholding of any bankrupt's order of discharge, shall be filed at the time of the filing of such petition of appeal.

Affidavits.

Costs.

68. Every bill of fees and disbursements, and charges of any solicitor or attorney, messenger, broker or auctioneer under any petition for adjudication of bankruptcy, shall be delivered to the registrar for taxation five clear days at least before the day appointed for an audit; and in default thereof, if the holding of such audit shall be adjourned by reason of such default, such solicitor, attorney, messenger, broker or auctioneer, shall pay the costs occasioned by the adjournment, and the amount thereof shall be deducted from the amount of such bill; and no money shall be paid out of the estate to any solicitor, attorney, messenger, broker or auctioneer, on account of any fees or disbursements or charges of any bill, until such bill shall have been taxed; and every such solicitor, attorney, messenger, broker or auctioneer shall at the time of taxation

Solicitors, &c. to deliver their bills of costs before audit.

account to the court or registrar for any sum which he may have received from or for the bankrupt or from any other person by way of deposit or otherwise, in respect of such fees, disbursements or charges; and the difference between the amount of the bill as taxed and the amount of the deposit shall be paid to or received out of the estate by the person with whom such deposit has been made, as the case may be.

Priority of payment of charges on estate.

69. At the first audit, after payment or retainer out of the estate of the bankrupt of all monies duly paid or costs incurred by the official or creditors' assignee, and of all fees and costs of the officers of the court, and afterwards of the per-centage payable to the official assignee in respect of the realization of the property, the taxed costs and charges of the bankrupt's solicitor acting in the matter of the bankruptcy shall be paid.

Where joint estate insufficient, costs to be paid out of separate estate.

70. In case any joint estate of any bankrupts shall be insufficient to pay any costs or charges necessarily incurred in respect of the same, the court may order such costs to be paid out of the separate estates of such bankrupts, or of one or any of them; or the court may order the costs necessarily incurred for any separate estate to be paid out of such joint estate, if the said costs were incurred with reasonable probability of benefit to the joint estate.

Stamps.

Defacing stamps.
B. A. 1861,
sect. 42.

71. Every officer of the court who shall receive any document to which a stamp shall be affixed, or upon which a stamp shall be impressed, shall, immediately upon the receipt of such document, deface the stamp thereon, by writing across the stamp the name of the bankrupt; and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid, and it shall be the duty of the party presenting or receiving such document to see that such defacement has been duly made.

Examination of Bankrupt.

Shorthand writer.
B. A. 1861,
sect. 61.

72. If the court or registrar shall in any case be of opinion that it would be desirable that a person should be appointed to take down the answers of the bankrupt, it shall be competent for the court or registrar to make such an appointment; and every person so appointed shall be considered to be a shorthand writer, under section 61 of "The Bankruptcy Act, 1861," and shall be paid a sum not exceeding one guinea out of the estate, as may be allowed by the court or registrar; and if the estate be insufficient, then the registrar of the court shall pay the same, and such payment shall be treated as a disbursement of the court, and shall be repaid to the registrar by the treasurer at the next audit.

Amendments.

Amendment.

73. In any proceeding before the court or registrar, the court or registrar may allow any amendments which in the judgment of the court or registrar are not material to the merits of the case, on such terms as may be ordered.

Costs of Printing, &c.

Where estate insufficient to pay costs of printing, &c.

74. The costs of printing and postages in any matters of bankruptcy in the county courts, and the fee to, and costs of, the gaoler for bringing up a prisoner petitioning *in formâ pauperis*, or adjudicated bankrupt by a registrar, under section 110 of "The Bankruptcy Act, 1861," and the cost of all necessary advertisements in the London Gazette and newspapers in proceedings on an adjudication of a pauper prisoner, whether on petition or under section 101 in prison, shall be defrayed out of the proceeds of the bankrupt's estate, and when such estate is insufficient to pay such costs, the same shall be repaid to the officer incurring the expense by the treasurer of the court.

Books to be provided by treasurer.

75. The account books shall be paid for by the treasurer of the court, and also the forms in the schedule numbered 19 to 28, both inclusive, 44, 45, 46, 69, 70, 71, 72, 73, 75, 76, 77 and 81.

Trial for Misdemeanor.

76. When the court shall appoint a day for the trial of a bankrupt, on a charge of misdemeanor, and the bankrupt shall require a jury for the purpose of such trial, the registrar shall summon such jury from the list delivered to him by the sheriff under the 9 & 10 Vict. c. 95 ; and the proceedings at the trial as to the calling, impannelling, challenging, and swearing the jury shall be in the manner provided for the trial of causes under the provisions of the 72nd and 73rd sections of the 9 & 10 Vict. c. 95, except that the number of the jury impannelled and sworn shall be twelve.

Jury, how to be summoned under B. A. 1861, sect. 159.

Remuneration of Managers.

77. Whenever a manager shall be appointed under sect. 122 of "The Bankruptcy Act, 1861," to collect and wind-up an estate, the remuneration to be paid out of the estate to such person shall be clearly stated in the appointment; and before any money is paid out of the estate to such person, the charges made by such person shall be taxed by the registrar of the court, in accordance with the terms of the appointment, which shall for such purpose be produced to the registrar, and if the amount or mode of remuneration is not stated in the appointment, no allowance will be made to such manager.

Remuneration of managers under B. A. 1861, sect. 122.

Short Title.

78. These orders may be cited for all purposes as "The County Court Bankruptcy Orders, 1863."

Short title of orders.

J. B. DASENT.
D. D. HEATH.
J. WORLLEDGE.
RUPERT A. KETTLE.
WILLIAM FURNER.

I sanction these orders. 6th Nov. 1863.

WESTBURY, C.

SCHEDULE.

"THE BANKRUPTCY ACT, 1861."

LIST OF FORMS.

	PAGE
1. Record of the taking the Oath prescribed by Section 7 of "The Bankruptcy Act, 1861," to be entered in the Minute-Book of each Court over which the Judge presides	1410
CASES UNDER £300.	
2. Petition for Adjudication of Bankruptcy against himself by a Debtor whose Debts do not exceed 300l.	1410
3. Notice by a Debtor in Custody of his Intention to petition a County Court for Adjudication of Bankruptcy against himself	1410
4. Affidavit of Truth of Allegation in Petition	1410
5. Adjudication where Petitioner resided for the longest Period of Six Calendar Months in the District of the Court which he petitions	1411
6. Petition for Adjudication of Bankruptcy against himself by a Debtor in Custody whose Debts do not exceed 300l... .. .	1412
7. Order to bring up a Petitioner (Prisoner) for Adjudication	1412
8. Adjudication where Petitioner is a Prisoner	1412

	PAGE
9. Affidavit of Service of Adjudication where Bankrupt not present at the Adjudication	1413
10. Notice to detaining Creditor of Bankrupt's Intention to apply for Discharge from Prison under Sect. 112 of Act of 1849	1414
11. Affidavit of Service of Notice	1414
12. Warrant to bring up Bankrupt	1414
13. Order to release Bankrupt out of Custody	1415

ADDITIONAL FORMS WHERE PETITION IS PRESENTED IN FORMA PAUPERIS.

14. Affidavit of Pauper Prisoner	1415
15. Notice to Detaining and Execution Creditors of a Prisoner petitioning in formâ pauperis	1415
16. Examination of a Prisoner petitioning in formâ pauperis. Sect. 99 of "The Bankruptcy Act, 1861"	1415
17. Adjudication against a Prisoner petitioning in formâ pauperis	1416

PRISON CASES UNDER SECTS. 100 AND 101.

18. Gaoler's Return, Sect. 100 of "The Bankruptcy Act, 1861"	1417
19. Order for Registrar to attend Gaol	1417
20. Notice to the Gaoler and Detaining Creditors of the Attendance of a Registrar to release Prisoners	1417
21. Examination of Prisoner under Sect. 101 of "The Bankruptcy Act, 1861"	1418
22. Adjudication by Registrar after Examination in Gaol	1418
23. Order of Discharge to Gaoler by Registrar	1419
24. Certificate of Registrar of a County Court of the Particulars of each Case of Prisoners examined by him	1420

ADDITIONAL FORMS WHERE PRISONER REFUSES TO ANSWER, &c.

25. Registrar's Report of Prisoner refusing to answer, &c.	1421
26. Warrant of Committal to Common Gaol	1421
27. Order of Discharge from Detention on Civil Process that Warrant may be executed	1421
28. Adjudication in Bankruptcy under the last preceding Order	1422

LUNATIC PRISONERS.

29. Medical Certificate	1423
30. Petition by Person appointed to represent a Lunatic	1423
31. Adjudication in the Case of a Lunatic Prisoner	1423

GENERAL FORMS IN ALL CASES.

32. Statement to be filed in Court, by Debtor petitioning for Adjudication against himself, of Debts, &c.	1424
33. Estate Paper	1426
34. Order giving further Time to file Statement under Sect. 93 of "The Bankruptcy Act, 1861"	1427
35. Declaration to be made by the Bankrupt or the Bankrupt's Wife	1428
36. Warrant of Seizure	1428
37. Inventory (when required) of what has been seized under Warrant	1428
38. Order to sell before Choice of Assignees, Sect. 40 of "The Bankrupt Law Consolidation Act, 1849"	1429
39. Order for Sale of Goods in reputed Ownership	1429
40. Order for the Sale of Book Debts	1429
41. Search Warrant	1429
42. Letter to Debtor	1430
43. Second Letter to Debtor, where first Application has not been effectual	1430
44. Notice to Creditor	1431
45. Messenger's Memorandum of Service of Notice to Creditors	1431
46. Order to Postmaster-General	1432
47. Declaration of Proof of Debt by Creditor under Sect. 144 of "The Bankruptcy Act, 1861"	1432
48. Declaration of Proof of Debt by Agent to a Body Politic or Public Company under Sect. 144 of "The Bankruptcy Act, 1861"	1432
49. Affidavit in Proof of Debt under Sect. 146 of "The Bankruptcy Act, 1861"	1432
50. Affidavit in Proof of Debt with or without Security	1433
51. Memorandum of expunging Proof of Debt	1433

	PAGE
52. Letter of Attorney	1434
53. Affidavit verifying Letter of Attorney	1434
54. Order giving Time to Surrender on Account of Illness	1434
55. Memorandum on First Meeting	1435
56. Choice of Assignee	1435
57. Certificate of Appointment of Assignee	1435
58. Allowance to Bankrupt	1435
59. Bailiff's Memorandum of Possession	1436
60. Resolution at First Meeting under Sects. 110 or 185 of "The Bankruptcy Act, 1861"	1436
61. Notice to Creditors of Adjournment of First Meeting under Sect. 110 of "The Bankruptcy Act, 1861"	1436
62. Affidavit of Service of the above Notice	1437
63. Resolution at Adjourned Meeting under Sect. 110 of "The Bankruptcy Act, 1861"	1437
64. Statement of Accounts to be filed under Sect. 141 of "The Bankruptcy Act, 1861"	1437
65. Abstract of the Statement of Accounts to be sent to every Creditor who has proved. Sect. 142 of "The Bankruptcy Act, 1861"	1438
66. Official Assignee's Report. Sect. 143 of "The Bankruptcy Act, 1861"	1438
67. Last Examination of Bankrupt	1439
68. Order annulling an Adjudication	1440
69. Warrant of Committal of Bankrupt or other Party, for unsatisfactorily answering, or for refusing to sign his Examination	1440
70. Warrant against any Person disobeying any Rule or Order of Court	1440
71. Clear Statement of Charge to be delivered to Bankrupt under Sect. 159 of "The Bankruptcy Act, 1861"	1441
72. Affidavit of Delivery of clear Statement. Sect. 159 of "The Bankruptcy Act, 1861"	1441
73. Appointment of Prosecutor	1442
74. Pleas to clear Statement	1442
75. Conviction of Bankrupt of Misdemeanor by a Judge	1442
76. Conviction of Bankrupt of Misdemeanor by Verdict	1442
77. Warrant of Committal for Misdemeanor	1443
78. Memorandum of granting of Order of Discharge	1443
79. Order of Discharge, when granted at last Examination	1444
80. Order of Discharge, when granted after last Examination	1444
81. Warrant of Commitment under Sect. 159 of "The Bankruptcy Act, 1861"	1445
82. Admission of Debt by Debtor of Bankrupt	1445
83. Order for Payment of an admitted Debt	1446
84. Audit Form and Assignees' Debtor and Creditor Account	1446
85. Resolution of Dividend. Sect. 174 of "The Bankruptcy Act, 1861"	1447
86. List of Creditors entitled to Dividend	1447
87. Notice of Dividend	1447
88. Summons to Witness	1448
89. Receipt to Debtor of Bankrupt	1448
90. Advertisement of Adjudications and First Meeting of Creditors in London Gazette	1448
91. Advertisement of Sitting for last Examination in London Gazette	1449
92. Advertisement of Dividend Meeting in London Gazette	1449
93. Advertisement of Order of Discharge in London Gazette	1449
94. Advertisement of First Meeting of Creditors in Newspaper	1449
95. Advertisement of Sitting for last Examination in Newspaper	1450
96. Advertisement of Order of Discharge in Newspaper	1450
97. Advertisement of Dividend Meeting in Newspaper	1450

BOOKS, &c.

A.—Cash Book	1451	E.—Registrar's Fee Book	1453
B.—Instalment Book	1451	F.—High Bailiff's Register	1454
C.—Estate Ledger	1452	G.—High Bailiff's Fee Book	1455
D.—List of Debts	1452		

COUNTY COURT BANKRUPTCY FORMS, 1863.

No. 1.

Record of the taking the Oath prescribed by Section 7 of "The Bankruptcy Act, 1861," to be entered in the Minute Book of each Court over which the Judge presides.

"The Bankruptcy Act, 1861."

B. A. 1861, sect. 7. Be it remembered that C. D., judge of this court, did at the general quarter sessions of the peace holden at —, in and for the county of —, take the oath prescribed by "The Bankruptcy Act, 1861."

CASES UNDER £300.

No. 2.

Petition for Adjudication of Bankruptcy against himself by a Debtor whose Debts do not exceed £300.

"The Bankruptcy Act, 1861."

To the County Court of —, holden at —.

B. A. 1861, sect. 94.
C. C. Order 12.

The humble petition of [here insert at full length the name, address and description of the petitioner, and also the description of the trade or business, or trades or businesses, if any, which he has carried on during the six calendar months next before the filing of his petition].

Showeth,

That your petitioner has resided for the longest period during the last six calendar months next before the date of this petition within the district of this court, to wit, the period of — at —, and owes debts not exceeding 300*l.*, and being unable to meet his engagements with his creditors, doth pray that he may be adjudged a bankrupt.

And your petitioner will ever pray, &c.

(Signed) A. B.

Signed by the petitioner on the — day of —, 186—, in the presence of —, solicitor in the matter of the petition.

No. 3.

Notice by a Debtor in Custody of his Intention to petition a County Court for Adjudication of Bankruptcy against himself.

"The Bankruptcy Act, 1861."

B. A. 1861, sect. 95.

Take notice, that I intend to petition the county court of —, holden at —, for the adjudication of bankruptcy against myself.

Dated this — day of —.

A. B., a prisoner in the gaol [or prison] at —, in the county of —.

To the gaoler [or keeper] of the gaol [or prison] at —, in the county of —.

No. 4.

Affidavit of Truth of Allegation in Petition.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sects. 87, 94.
C. C. Orders 9, 14.

I, A. B., the petitioner named in the petition hereunto annexed, make oath [if the petitioner affirm alter the form accordingly] and say, that the several allegations in the said petition are true (a), and that I verily believe the debts justly due and proveable in bankruptcy against my estate amount in the whole to a sum not exceeding 300*l.*

Sworn at —, in the county of —,
this — day of —, 186—, before
me,

(Signed) A. B.

C. D.

(a) If prisoner petitions *in formá pauperis*, end here.

No. 5.

Adjudication where Petitioner resided for the longest Period of Six calendar Months in the District of the Court which he petitions.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, —, of — [following the description given by the petitioner in his petition].

Upon reading the petition of the above-named *A. B.*, praying that adjudication of bankruptcy may be made against him, and also his affidavit stating that the several allegations in the said petition are true, and that he verily believes that the debts justly due and proveable in bankruptcy against his estate amount in the whole to a sum not exceeding 300*l.*, I do adjudge the said *A. B.* a bankrupt, and I do hereby grant the said bankrupt protection from arrest from any claim, debt or demand now due from or owing by him until the — day of —; and I do appoint a sitting to be held at — on the — day of —, 186—, at — of the clock in the —noon precisely, at which sitting the bankrupt is required to surrender and conform, and which sitting I appoint also to be a public meeting of creditors of the bankrupt for such proceedings as may be taken under "The Bankruptcy Act, 1861." B. A. 1861, sect. 94.

Given under my hand and the seal of this court, this — day of —, 186—. (L.S.)
—, Judge [or Registrar].

Endorsement on Adjudication to be filed in Court.

On the day on which this adjudication was made, I, *C. D.*, the registrar of this court, delivered to the bankrupt a duplicate of the adjudication. C. C. Order 18.

C. D., Registrar.

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication to be filed in court:—

I hereby give further protection to the bankrupt until the — day of —. C. C. Order 42.
Dated this — day of —, 186—.

—, Judge [or Registrar].

Endorsement to be made on Adjudication at Time of Adjudication.

Notice to the bankrupt.

Take notice that you, *A. B.*, are required to attend personally at —, on the — day of —, 186—, at — of the clock in the —noon precisely (*the time appointed for the first meeting being a sitting to surrender and conform*), there and then to surrender and conform to the bankruptcy laws. C. C. Order 18.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made on Adjudication at First Meeting.

Take notice that you, *A. B.*, are required to attend personally at the sitting of the court to be held on the — day of —, 186—, at — of the clock in the —noon precisely, being the day appointed for the passing of your last examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects. And further take notice, that you are required to prepare a statement of your accounts, and to file the same in court *ten* days at least before the day so appointed for your last examination, according to the form prescribed by general orders. B. A. 1861, sect. 141.
C. C. Order 42.
Form 64.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made where last Examination adjourned.

Take notice that you, *A. B.*, are required to attend personally at the sitting of the court to be holden on the — day of —, 186—, at — of the clock in the —noon precisely, by adjournment from the — day of —, 186—, being the day allowed for finishing your examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects, and to finish your examination. C. C. Order 42.

Dated this — day of —, 186—.

—, Registrar.

No. 6.

Petition for Adjudication of Bankruptcy against himself by Debtor in Custody whose Debts do not exceed £300.

"The Bankruptcy Act, 1861."

To the County Court of —, holden at —.

B. A. 1861, sect.
91.

C. C. Order 12.

The humble petition of [here insert at full length the name, address and description of the petitioner, and also the description of the trade or business, or trades or businesses, which he has carried on during six calendar months at —, in the county of —, next before his committal to prison].

Showeth,

That your petitioner is a prisoner in — gaol [or prison] at —, in the county of —, and owes debts not exceeding 300*l.* (a), and being unable to meet his engagements with his creditors, doth pray that he may be adjudged a bankrupt.

That your petitioner resided for the longest period during the last six calendar months next before the date of his committal, to wit, the period of — at —, in the county of —.

See Form 3.

And your petitioner has given notice in writing to the keeper of the above-named gaol [or prison] of his intention to present this petition.

B. A. 1861, sect.
98.

C. C. Order 29.

[Add, when the petitioner petitions in *forma pauperis*, and your petitioner not having the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of bankruptcy, hath made an affidavit to that effect, as required by the statute.]

And your petitioner shall ever pray, &c.

(Signed) A. B.

Signed by the petitioner on the — day of —, 186—, in the presence of —, solicitor in the matter of this petition.

No. 7.

Order to bring up a Petitioner (Prisoner) for Adjudication.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

I, the undersigned —, a registrar of the said county court of —, authorized to act under a petition for adjudication of bankruptcy, filed on the — day of —, 186—, by —, do hereby require you to bring the said —, whom you have in your custody, before this court, on the — day of —, 186—, at — o'clock precisely, at —, in order to be examined touching the discovery and disclosure of his estate and effects according to the directions of the act of parliament in that case made and provided.

Given under my hand and the seal of the court this — day of —, 186—.

—, Registrar.

To the keeper of the gaol [or prison] at —, or his deputy.

No. 8.

Adjudication where Petitioner is a Prisoner.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of — [following the description given by the petitioner in his petition].

B. A. 1861, sect.
94.

C. C. Order 18.

Upon reading the petition of the above-named A. B., praying that adjudication of bankruptcy may be made against him, and also his affidavit stating that the several allegations in the said petition are true, and that he verily believes that the debts justly due and proveable in bankruptcy against his estate amount in the whole to a sum not exceeding 300*l.*, I do adjudge the said A. B. a bankrupt, and I do hereby grant the said bankrupt protection from arrest from any claim, debt or demand now due from or owing by him until the — day of —. [And I do hereby order that

(a) Omit the words "and owing debts not exceeding 300*l.*" when prisoner petitions in *forma pauperis*.

the said bankrupt be forthwith discharged from custody.] [And I do order that the proceedings on this adjudication be transferred to the county court of —, holden at —, being the court in which the bankrupt, if not in custody, would have been required to petition.] B. L. C. A, 1849, sect. 112.

Given under my hand and the seal of this court, this — day of —, 186—. (L.S.) —, Judge [or Registrar].

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication filed:—

I hereby give further protection to the bankrupt until the — day of —. C. C. Order 42.
Dated this — day of —, 186—.

—, Judge [or Registrar.]

Endorsement on Adjudication to be filed in Court.

On the day on which this adjudication was made, I, C. D., the registrar of this court, delivered to the bankrupt a duplicate of the adjudication. C. C. Order 18.

C. D., Registrar.

Endorsement to be made on Adjudication at Time of Adjudication.

Notice to the bankrupt.

Take notice that you, A. B., are required to attend personally at — on the — day of —, 186—, at — of the clock in the —noon precisely [the time appointed for the first meeting being a sitting to surrender and conform], there and then to surrender and conform to the bankruptcy laws. C. C. Order 18.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made on Adjudication at First Meeting.

Take notice that you, A. B., are required to attend personally at the sitting of the county court of —, to be holden at — on the — day of —, 186—, at — of the clock in the —noon precisely, being the day appointed for the passing of your last examination, when and where you are required to surrender yourself and to make a full discovery and disclosure of your estate and effects. And further take notice, that you are required to prepare a statement of your accounts, and to file the same in court ten days at least before the day so appointed for your last examination, according to the form prescribed by general orders. B. A. 1861, sect. 141. C. C. Order 18. Form 64.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made where last Examination adjourned.

Take notice that you, A. B., are required to attend personally at the sitting of the county court of —, to be holden at — on the — day of —, 186—, at — of the clock in the —noon precisely, by adjournment from the — day of —, 186—, being the day appointed for finishing your examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects and to finish your examination. C. C. Order 42.

Dated this — day of —, 186—.

—, Registrar.

No. 9.

Affidavit of Service of Adjudication where Bankrupt not present at the Adjudication.

“The Bankruptcy Act, 1861.”

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

I, E. F., high bailiff [or I, G. H., one of the bailiffs] of the above-named court, make oath and say that I did on the — day of —, 186—, serve the above-named bankrupt with a duplicate of the adjudication of bankruptcy against him under the hand of the registrar of this court, a true copy whereof is hereunto annexed, marked with the letter A., by delivering the said duplicate adjudication to, and leaving the same with, the said bankrupt. C. C. Order 18.

Sworn at — in the — county }
of —, this — day of —, }
186—.

(Signed) E. F. [or G. H.]

Before me,

—, Registrar.

No. 10.

Notice to Detaining Creditor of Petitioner's Intention to apply for Discharge from Prison under Sect. 112 of Act of 1849.

"The Bankruptcy Act, 1861."

In the matter of —, now a prisoner in the gaol [or prison] at —, in the county of —.

B. L. C. A. 1849,
sect. 112.

Take notice, that the above-named — having filed a petition for adjudication of bankruptcy against himself in the county court of [here insert the name of gaol court] [to be added when necessary, and the proceedings under the said petition having been transferred to the county court of —, holden at —] will, on the — day of —, at the hour of — o'clock in the — noon precisely, at the county court of —, holden at —, surrender to the said petition, and apply to the court for protection.

And this is further to give you notice, that the said bankrupt being now detained in the said gaol for debt at your suit, will [if he shall be adjudged bankrupt and obtain his protection (a)] apply on the said — day of — at the hour above mentioned to the said court for his immediate release.

And this is further to give you notice to produce at the time and place aforesaid the record or entry of judgment under which the said bankrupt is now detained.

Dated this — day of —, 186—.

Yours, &c.

To —.

Solicitor in the matter of the said petition.

This is the notice referred to in the annexed affidavit of —, sworn before me this — day of —, 186—.

No. 11.

Affidavit of Service of Notice.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

C. C. Order 9.

I, —, of —, in the county of —, make oath and say, that I did on the — day of —, 186—, serve true copies of the notice hereunto annexed marked A., by putting such copies into the letter box at the receiving house for general post letters, situate at —, addressed in the manner following, that is to say:—

To —.

To —.

To —.

To —.

And that a proper postage stamp was affixed to each of the said notices.

Sworn at — in the — county of —, }
this — day of —, one thousand }
eight hundred and sixty —, }
Before me, *E. F.*

(Signed) *C. D.*

No. 12.

Warrant to bring up Bankrupt.

"The Bankruptcy Act, 1861."

In the County Court of [here insert name of court in which the prisoner's bankruptcy is being prosecuted].

B. L. C. A. 1849,
sect. 112.

I, the undersigned judge of the said county court, authorized to act under an adjudication of bankruptcy, dated the — day of —, 186—, against *A. B.*, do hereby require you to bring the said *A. B.* before me, at this court, on the — day of —, at — o'clock in the — noon precisely.

Given under my hand and the seal of the court, this — day of —, 186—.

(L.S.)

—, Judge.

To the gaoler or keeper of the — gaol
or his deputy.

(a) Omit words within brackets, where notice sent after adjudication has been made.

No. 13.

Order to release Bankrupt out of Custody.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

Whereas *A. B.*, of —, a prisoner in the gaol of —, was on the — day of — B. L. C. A. 1849, duly adjudged a bankrupt. sect. 112.

And whereas this court is of opinion that the said bankrupt should be discharged.

Now, therefore, I the undersigned, having authority in that behalf, do hereby authorize and require you on receipt hereof forthwith to discharge the said *A. B.* whom you have in your custody under a writ of — at the suit of *C. D.*

Given under my hand and the seal of the court, this — day of —, 186—.

(L.S.)

Judge of the said Court.

To the gaoler or keeper of the said gaol or his deputy.

ADDITIONAL FORMS WHERE PETITION IS PRESENTED IN FORMA PAUPERIS.

No. 14.

Affidavit of Pauper Prisoner.

"The Bankruptcy Act, 1861."

I, the undersigned *A. B.*, of —, being now a prisoner for debt in the gaol [or B. A. 1861, sect. prison] at —, in the county of —, and being desirous of petitioning for an adjudi- 98. cation of bankruptcy against myself, do make oath and say that I have not the means C. C. Order 9. of paying the fees and expenses usually payable in respect of petition by a debtor for an adjudication of bankruptcy.

Sworn at — gaol [or prison] in the }
county of —, this — day of —, }
186—.

(Signed) —, Gaoler.

Before me, *E. F.*

No. 15.

Notice to Detaining and Execution Creditors of a Prisoner petitioning in formâ pauperis.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

Whereas *A. B.*, —, of —, has presented a petition to this court for an adjudica- C. C. Order 30. tion of bankruptcy against himself, and has made an affidavit stating that he has not the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of bankruptcy.

Notice is hereby given, that the said petitioner will be brought before the county court of —, holden at —, on the — day of —, 186—, at the hour of — in the — noon — to be then and there examined by the judge of the said court, touching his estate and effects, debts, dealings and transactions.

And the court may after such examination adjudge the said petitioner a bankrupt, and may grant him protection from arrest from any claim, debt or demand now due or owing by him, and make an order for his release from prison.

To *C. D.*, the creditor of the said *A. B.*

—, Registrar.

No. 16.

Examination of Prisoner petitioning in formâ pauperis. Sect. 99 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

On the — day of —, 186—.

In the matter of *A. B.*, a prisoner in the gaol [or prison] at —, in the county of —, and a petitioner in formâ pauperis for an adjudication of bankruptcy.

The said petitioner being sworn and examined touching his estate and effects, debts, B. A. 1861, sect. dealings and transactions, upon his oath saith, I am a prisoner for debt in the gaol at 99. — at the suit of —.

I owe debts amounting to the sum of [here set out the bankrupt's debts, estate and effects. If none, say I have no debts owing to me, nor have I any estate or effects whatsoever].

Sworn in court, at —, this — day }
of —, 186—.

(Signed) A. B.

Before me,
— Judge of the said Court.

No. 17.

Adjudication against a Prisoner petitioning in formâ pauperis.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B. of [following the description given by the petitioner in his petition].

B. A. 1861, sect.
99.

Whereas A. B. aforesaid, now a prisoner in the gaol [or prison] at —, in the county of —, has presented a petition to this court praying that he may be adjudged a bankrupt, and has made an affidavit stating that he has not the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of bankruptcy.

And whereas the said A. B. having been brought before this court has been examined by me touching his estate and effects, debts, dealings and transactions.

C. C. Orders 18,
22.
Forms 32, 33.

Now I [not] being satisfied with the answers made by the said A. B. do [not] adjudge him a bankrupt [to be added where prisoner is ordered to be released, and I do order that the said A. B. be forthwith discharged from custody], [and to be added when protection granted, and I do hereby grant the said A. B. protection from arrest from any claim, debt or demand now due from or owing by him until the — day of —, 186—, at — of the clock in the — noon precisely, when the said bankrupt must present himself to the registrar of this court, and file a statement of his debts and liabilities, and the names, descriptions and residences of his creditors, and the cause of his inability to meet his engagements, and the estate paper required by general orders].

Given under my hand and the seal of this court, this — day of —, 186—.

(L.S.) —, Judge [or Registrar].

Endorsement on Adjudication to be filed in Court.

C. C. Order 18.

On the day on which this adjudication was made, I —, registrar of the county court of —, holden at —, delivered to the bankrupt a duplicate of the adjudication to the bankrupt.

C. D., Registrar.

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication filed:—

C. C. Order 42.

I hereby give further protection to the bankrupt until the — day of —, 186—. Dated this — day of —, 186—.

—, Judge [or Registrar].

Endorsement to be made on Adjudication at Time of Adjudication.

Notice to the bankrupt.

C. C. Order 18.

Take notice that you, A. B., are required to attend personally at — on the — day of —, 186—, at — of the clock in the — noon precisely [the time appointed for the first meeting being a sitting to surrender and conform], there and then to surrender and conform to the bankruptcy laws.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made on Adjudication at First Meeting.

C. C. Order 42.
Form 64.

Take notice that you, A. B., are required to attend personally at the sitting of the court to be holden on the — day of —, 186—, at — of the clock in the — noon precisely, being the day appointed for the passing of your last examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects. And further take notice, that you are required to prepare a statement of your accounts, and to file the same in court ten days at least before the day so appointed for your last examination, according to the form prescribed by general orders.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made where last Examination adjourned.

Take notice that you, *A. B.*, are required to attend personally at the sitting of the court to be holden on the — day of —, 186—, at — of the clock in the — noon precisely, by adjournment from the — day of —, 186—, being the day allowed for finishing your examination, when and where you are required to surrender yourself and to make a full discovery and disclosure of your estate and effects, and to finish your examination. C. C. Order 42

Dated this — day of —, 186—.

—, Registrar.

PRISON CASES, UNDER SECTS. 100 AND 101.

No. 18.

Gaoler's Return. Sect. 100 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

Return made by —, gaoler of — gaol [or keeper or governor of — prison], in the county of —, this first [or this second] day of —, 186— [the first day of the month being Sunday], in pursuance of the above act, of every person now within the walls, rules or liberties of the said gaol [or prison], in custody upon any process whatsoever, for or by reason of any debt, claim or demand whatsoever, and not being within any of the exceptions mentioned in section 104 of "The Bankruptcy Act, 1861." B. A. 1861, sect. 100.

B. A. 1861, sect. 104.

Name of person detained, and date of his imprisonment.	Name and address of every creditor at whose suit such prisoner is imprisoned or detained.	Nature and amount of debt or demand, or debts and demands, for which such prisoner is detained in custody.		Whether such prisoner is willing or refuses to petition the court of bankruptcy, or is unable to do so by reason of poverty.
			£ s. d.	

A true return.

— Gaoler [or keeper, or governor].

No. 19.

Order for Registrar to attend Gaol.

"The Bankruptcy Act, 1861."

I, *E. F.*, judge of the county court of —, holden at —, in pursuance of the power conferred upon me by "The Bankruptcy Act, 1861," do order that the registrar of this court do attend at the — gaol [or prison] at — in the county of —, at — o'clock in the — noon, and then and there examine the prisoners included in the return made by the gaoler of the said gaol [or keeper or governor of the said prison], dated the — day of —, 186—, and hereto annexed, and proceed thereon and make such orders as the said statute directs. B. A. 1861, sect. 101.

Dated this — day of —, 186—.

E. F., Judge.

No. 20.

Notice to the Gaoler and Detaining Creditors of the Attendance of a Registrar to release Prisoners.

"The Bankruptcy Act, 1861."

Take notice, that the judge of the county court of —, holden at —, has made an order in pursuance of sect. 101 of the above act, that the registrar of the said court do attend at the gaol [or prison] at —, in the county of —, on the — day of —, B. A. 1861, sect. 101. C. C. Order 31.

186—, at — o'clock in the — noon, and examine *A. B.*, of —, now a prisoner for debt at such gaol [or prison], when the said registrar will have power to make an order of adjudication of bankruptcy against the said *A. B.* and for his [or her] release from prison, and to direct in what court such bankruptcy shall be prosecuted.

Dated this — day of —, 186—.

(Signed) *C. D.*
Registrar of the said court.

To gaoler of — gaol, or *E. F.*, }
creditor of the above *A. B.* }

No. 21.

Examination of Prisoner under Section 101 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

B. A. 1861, sect.
101.

At the gaol [or prison] at —, in the county of —, this — day of —, 186—.

In the matter of —, a prisoner, being No. — in the return made by the governor of the said gaol to the London Court of Bankruptcy, on the — day of —, 186—.

Before —, the registrar of the county court of —, holden at —.

The above-named prisoner being this day sworn and examined upon his oath, said that —.

No. 22.

Adjudication by Registrar after Examination in Gaol.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, late of —, in the county of —, a prisoner for debt in the gaol [or prison] at —, in the county of —, on this — day of —, 186—.

B. A. 1861, sect.
101.

Whereas, in pursuance of an order of the judge of the county court of —, holden at —, dated the — day of —, 186—, I, a registrar of the said court, attended on the — day of —, 186—, at the said gaol [or prison], and there examined the said prisoner, whose examination in writing is filed herewith, whereby it appears that the said prisoner being a non-trader [or trader], had on the said — day been in prison for debt [or as the case may be], at the suit of —, of —. for fourteen days, [or two calendar months,] namely, from the — day of — [here insert the day on which the prisoner was lodged in prison] and that the last place of his abode and place of business [or place of abode] within six months next prior to his imprisonment was —, and that the said prisoner has not been summoned under a judgment debtor summons [or, that having been summoned under a judgment debtor summons, he has not offered such security for the debt or debts in respect of which he is imprisoned or detained as I deem reasonably sufficient:

B. A. 1861, sect.
71.

I do adjudge the said *A. B.* a bankrupt. And I do hereby order that the said bankrupt be forthwith discharged from custody; and I do hereby direct that the said bankruptcy be prosecuted in the court of bankruptcy for the — district [or in the county court of —, holden at —]. And I do hereby grant the said bankrupt protection from arrest from any claim, debt or demand now due from or owing by him until the — day of —, at — of the clock in the — noon precisely, when the said bankrupt must present himself to the registrar of [here insert the court in which the bankruptcy is to be prosecuted, and file a statement of his debts and liabilities, and the names, descriptions and residences of his creditors, and the cause of his inability to meet his engagements, and the estate papers required by general orders.]

C. C. Order 34.
Forms 32, 33.

—, Registrar.

Endorsement on Adjudication to be filed in Court.

C. C. Order 18.

On the day on which this adjudication was made I, *C. D.*, the registrar, making the adjudication delivered to the bankrupt a duplicate of the adjudication.

C. D., Registrar.

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication filed :—

I hereby give further protection to the bankrupt until the — day of —, 186—. C. C. Order 42.
Dated this — day of —, 186—.

Registrar of the county court of —, holden
at — [being the court in which the bankruptcy is being prosecuted].

Endorsement to be made on Adjudication at Time of Adjudication.

Notice to the bankrupt.

Take notice that you, A. B., are required to attend personally at —, on the — day of —, 186—, at — of the clock in the — noon precisely [the time appointed for the first meeting being a sitting to surrender and conform], there and then to surrender and conform to the bankruptcy laws. C. C. Order 18.

Dated this — day of —, 186—.

Registrar of the county court of —, holden
at — [being the court in which the bankruptcy has been directed to be prosecuted].

Further Endorsement to be made on Adjudication at First Meeting.

Take notice that you, A. B., are required to attend personally at the sitting of the county court of —, to be holden at —, on the — day of —, 186—, at — of the clock in the — noon precisely, being the day appointed for the passing of your last examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects. And further take notice, that you are required to prepare a statement of your accounts, and to file the same in court ten days at least before the day so appointed for your last examination, according to the form prescribed by general orders. C. C. Order 42. Form 64.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made where last Examination adjourned.

Take notice that you, A. B., are required to attend personally at the sitting of the county court of —, to be holden at —, on the — day of —, 186—, at — of the clock in the — noon precisely, by adjournment from the — day of —, 186—, being the day appointed for finishing your examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects, and to finish your examination. C. C. Order 42.

Dated this — day of —, 186—.

—, Registrar.

No. 23.

Order of Discharge to Gaoler by Registrar.

“The Bankruptcy Act, 1861.”

In the matter of A. B., late of —, in the county of —, a prisoner for debt in — gaol [or prison] on this — day of —, 186—.

Whereas in pursuance of an order of the judge of the county court of —, holden at —, dated the — day of —, 186—, I attended on the — day of —, 186—, at the said gaol [or prison], and having examined the said prisoner, I adjudged him to be a bankrupt: Now therefore I do order you forthwith to discharge the said A. B. from your custody; and for so discharging him this shall be your sufficient warrant. B. A. 1861, sect. 101.

C. D., Registrar of the said court.

To the gaoler of — gaol, of — [or keeper of — prison].

No. 24.—Certificate of Registrar of a County Court of the Particulars of each Case of Prisoners examined by him.

"The Bankruptcy Act, 1861."

B. A. 1861, I, C. D., Registrar of the County Court of Pembroke, holden at Haverfordwest, do certify that on the fifteenth day of November I attended at the gaol [or prison] at Haverfordwest, in the county of Pembroke, and examined the persons included in a return made by the keeper of such gaol [or prison] as being in his custody on the (first) day of November, 1861, and that the particulars of the examination of every such person is as follows:—

C. D., Registrar of the said court.

Name of persons detained.	Residence or place of business for the longest period of six calendar months next preceding his imprisonment.	Date of imprisonment.	Number of days that he had been detained on the day of my examination.	Whether trader or non-trader.	Amount of debts for which he is detained.	Names, addresses and descriptions of detaining creditors.	Has been summoned on a judgment debtor summons to appear at the court and on the day stated below. (Sect. 71.)	Nature of security offered for debts in respect of which he is detained. (Sect. 71.)	Has not been summoned on a judgment debtor summons.	Trade or calling of person detained.	Total amount of debts and liabilities as ascertained on examination.	Total amount of assets as ascertained on examination.	Cause of insolvency as shown on examination.	Memorandum of what was done in each case.
J. A.	Haverfordwest, in the county of Pembroke.	7th Sept. 1861.	59	Trader.	£ s. d. 363 17 6	A. B. C. D.	Bristol District Court of Bankruptcy, to appear 25 Nov. 1861.	Mortgage of a house.	...	Miller.	£ 1,500	£ 486	Misfortune in trade.	Adjudged a bankrupt, as I did not deem the security offered by him for the debts in respect of which he is detained reasonably sufficient.
H. T.	Narberth, in the county of Pembroke.	3rd Aug. 1861.	64	Non-trader.	89 4 4	G. H.	...	...	Has not.	Accountant.	250	34	Illness of himself and family.	Adjudged a bankrupt with protection. Order of release made and adjudication directed to be prosecuted in the county court of Pembroke, holden at Narberth.
W. S.	Neath, in the county of Glamorgan.	1st Mar. 1861.	259	Non-trader.	892 0 0	W. L. E. G. R. S.	...	...	Has not.	Gentleman.	5,000	2,084	Extravagance.	Adjudged a bankrupt without protection. Adjudication directed to be prosecuted in the Bristol district court of bankruptcy.
A. L.	Haverfordwest, in the county of Pembroke.	3rd Oct. 1861.	23	Non-trader.	69 0 0	A. F.	...	...	...	Clerk to an attorney.	...	...	...	Not examined, he being a non-trader, and not having been in prison two calendar months.

ADDITIONAL FORMS, WHERE PRISONER REFUSES TO ANSWER, &c.

No. 25.

Registrar's Report of Prisoner refusing to answer, &c.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, late of —, in the county of —, a prisoner for debt
[or as the case may be] in — gaol [or prison] at —, in the county of
—, on this — day of —, 186—.

Whereas in pursuance of an order of the judge of the county court of —, holden at —, dated the — day of —, 186—, I, a registrar of the said court, attended at — gaol [or prison] at —, on this — day of —, 186—, and examined the said *A. B.* And whereas the said *A. B.* refused to appear before me [or refused to be sworn, or refused to answer the lawful questions put to him [or her] by me [or by —, the execution or detaining creditor, or a creditor of the said *A. B.*] respecting his debts, liabilities, dealings and transactions, or to make a full discovery of his estate and effects, and of all his books of account or to produce the same [or that the said *A. B.* having been examined by me in accordance with the provisions of the above act, refused to sign his examination when taken]: Now therefore I do report such refusal to you —, esquire, the judge of the county court of —, holden at —.

B. A. 1861, sect. 102.

— Registrar of the said Court.

No. 26.

Warrant of Committal to Common Gaol.

"The Bankruptcy Act, 1861."

At the County Court of —, holden at —.

In the matter of *A. B.*, late of —, in the county of —, a prisoner for debt [or as the case may be] in — gaol [or prison] on this — day of —, 186—.

Whereas it appearing by the return made to this court, by the gaoler of — gaol [or keeper or governor of — prison], dated the — day of —, 186—, that *A. B.*, late of —, was detained in the said gaol [or prison] for debt [or as the fact was stated], I did in pursuance of the above act order that the registrar of this court should attend at the said gaol [or prison] on the — day of —, 186—. And whereas by the report of the said registrar, made in pursuance of the said act, and dated the — day of —, 186—, it appears [here set out the registrar's report as to the refusal of the prisoner].

B. A. 1861, sect. 102.

Form 25.

These are therefore to will, require and authorize you, the high bailiff and others the bailiffs of this court, immediately upon receipt hereof, to take into your custody the body of the said *A. B.*, and him safely to convey to her majesty's gaol of —, and there deliver him to the governor [or gaoler] thereof, together with this warrant; and the said governor [or gaoler] of the said gaol is hereby authorized and required to receive the said *A. B.* into his custody, and him safely to keep and detain without bail or mainprize with [or but without] hard labour for the period of — (a).

Given under my hand and the seal of this court, this — day of —, in the year of our Lord 186—.

(L.S.) —, Judge.

To —, high bailiff, and others the bailiffs
of the said county court of —, holden
at —, and to all peace officers, the
governor [or gaoler] of her majesty's
gaol, at —.

No. 27.

Order of Discharge from Detention on Civil Process that Warrant may be executed.

"The Bankruptcy Act, 1861."

At the County Court of —, holden at —.

In the matter of *A. B.*, late of —, in the county of —, a prisoner for debt
in — gaol [or prison] on the — day of —, 186—.

Whereas I, in pursuance of the above act, have by warrant under my hand and the seal of this court committed the said prisoner to her majesty's gaol of — and adjudged him to be a bankrupt: I do hereby order that the said prisoner be given up by

B. A. 1861, sect. 102.

(a) Not to exceed one month.

COUNTY COURT BANKRUPTCY FORMS, 1863.

you to the high bailiff or one of the bailiffs of this court, upon production to you of this order; and for so giving up the prisoner this shall be your sufficient warrant.

Given under my hand and the seal of this court, this — day of —, 186—.

To the gaoler of — gaol (L.S.) X. Y., Judge.
[or keeper of — prison]. —

No. 28.

Adjudication in Bankruptcy under the last preceding Order.

No. —.

Adjudication of Bankruptcy.

“The Bankruptcy Act, 1861.”

At the County Court of —, holden at —.

In the matter of *A. B.*, late of —, in the county of —, a prisoner for debt in — gaol [or prison].

B. A. 1861, sect. 102.

Whereas it appearing to me by a return dated the — day of —, 186—, made by the gaoler of — gaol [or keeper of — prison], that *A. B.*, late of —, was detained in the said gaol [or prison] for debt [or as the fact was stated in the return], I did order that the registrar of this court should attend at the said gaol [or prison] on the — day of —, 186—: And whereas by the report of the said registrar, dated the — day of —, it appears [here set out the registrar's report as to the refusal of the prisoner]: Now, therefore, I do declare and adjudge the said *A. B.* a bankrupt; and I do hereby grant him protection from arrest from any claim, debt or demand now due from or owing by him until the — day of —, at — of the clock in the — noon precisely, when the said bankrupt must present himself to the registrar of this court.

Form 25.

C. C. Order 18.

Given under my hand and the seal of this court, this — day of —, 186—.
(L.S.) —, Judge.

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication filed:—

C. C. Order 42

I hereby give further protection to the bankrupt until the — day of —, 186—. Dated this — day of —, 186—.

—, Registrar.

Endorsement to be made on Adjudication at time of Adjudication.

Notice to the bankrupt.

C. C. Order 18.

Take notice that you, *A. B.*, are required to attend personally at —, on the — day of —, 186—, at — of the clock in the — noon precisely [the time appointed for the first meeting being a sitting to surrender and conform, which time of course must be after the expiration of the time of bankrupt's penal imprisonment], there and then to surrender and conform to the bankruptcy laws.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made on Adjudication at First Meeting.

C. C. Order 42.

Take notice that you, *A. B.*, are required to attend personally at the sitting of the county court of — to be holden at — on the — day of —, 186—, at — of the clock in the — noon precisely, being the day appointed for the passing of your last examination, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects: And further take notice, that you are required to prepare a statement of your accounts, and to file the same in court ten days at least before the day so appointed for your last examination, according to the form prescribed by general orders.

Form 64.

Dated this — day of —, 186—.

—, Registrar.

Further Endorsement to be made where last Examination adjourned.

C. C. Order 42.

Take notice that you, *A. B.*, are required to attend personally at — on the — day of —, 186—, at — of the clock in the — noon precisely, at the sitting of the county court of — to be holden at — by adjournment from the — day of —, 186—, being the day appointed for finishing the examination of you the said bankrupt, when and where you are required to surrender yourself, and to make a full discovery and disclosure of your estate and effects and to finish your examination.

Dated this — day of —, 186—.

—, Registrar.

LUNATIC PRISONERS.

No. 29.

Medical Certificate.

"The Bankruptcy Act, 1861."

I, the undersigned — being a [set forth the qualification entitling the person certifying to practise as a physician, surgeon or apothecary, ex. gra.:—Fellow of the Royal College of Physicians in London, Licentiate of the Apothecaries Company, or as the case may be], and being in actual practice as a [physician, surgeon, or apothecary, as the case may be], hereby certify that I, on the — day of —, at the gaol of —, at —, in the county of —, separately from any other medical practitioner, personally examined — a prisoner for debt in the said gaol, and that the said — is a [lunatic or an idiot, or a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

B. A. 1861, sect. 106, Sched. H.

1. Facts indicating insanity observed by myself [here state the facts].
2. Other facts (if any) indicating insanity communicated to me by others [here state the information, and from whom].

(Signed) [Name.]
[Place of Abode.]

Dated this — day of —, in the year of our Lord 186—.

No. 30.

Petition by Person appointed to represent a Lunatic.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, a lunatic prisoner for debt in the gaol of —, at —, in the county of —.

To the County Court of —, holden at —.

The humble petition of *C. D.*, of —.B. A. 1861, sect. 106.
C. C. Order 12.

Showeth,

That your petitioner hath been appointed by the court of bankruptcy in London [or for the — district] to represent *A. B.*, a lunatic prisoner for debt in the above gaol [or prison].

That the said *A. B.* is unable to meet his [or her] engagements with his [or her] creditors.

And that your petitioner verily believes that the debts justly due and proveable in bankruptcy against the said lunatic prisoner's estate amount in the whole to a sum not exceeding £300.

Your petitioner therefore prays that the said *A. B.* may be adjudged a bankrupt.

And your petitioner will ever pray.

Signed by the petitioner on the — day of —, 186—.

C. D.

No. 31.

Adjudication in the case of a Lunatic Prisoner.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a lunatic prisoner for debt in the gaol [or prison] at —, in the county of —.

Upon reading the petition of *C. D.* appointed by the court of bankruptcy in London [or for the — district] to represent the above-named *A. B.*, praying that adjudication of bankruptcy may be made against the said *A. B.*, and also the affidavit of *C. D.*, stating that the several allegations in the said petition are true, and that he verily believes that the debts justly due and proveable in bankruptcy against the said *A. B.*'s estate amount in the whole to a sum not exceeding £300, I do adjudge the said *A. B.* a bankrupt, and do hereby grant the bankrupt protection from arrest from any claim, debt, or demand now due from or owing by him until the — day of —: And I do appoint a sitting to be held at — on the — day of —, 186—, at — of the

B. A. 1861, sect. 106.

C. C. Order 18.

clock in the — noon precisely, at which sitting the said *C. D.* is required, for the bankrupt, to surrender and conform, and which sitting I appoint also to be a public meeting of creditors of the bankrupt for such proceedings as may be taken under "The Bankruptcy Act, 1861."

Given under my hand and the seal of this court, this — day of —, 186—. (L.S.) Judge [or Registrar].

Endorsement on Adjudication to be filed in Court.

C. C. Order 18. On the day on which this adjudication was made I, the registrar of this court, delivered to *C. D.*, the representative of the bankrupt, a duplicate of the adjudication. —, Registrar.

NOTE.—Every time the protection is renewed these words should be added at the bottom of, or endorsed on, the duplicate adjudication and on the adjudication filed:—

C. C. Order 42. I hereby give further protection to the bankrupt until the — day of —. Dated this — day of —, 186—. Judge [or Registrar].

Endorsement to be made on Adjudication at time of Adjudication.

Notice to the Bankrupt's Representative.

C. C. Order 18. Take notice that you, *C. D.*, are required to attend personally at — on the — day of —, 186—, at — of the clock in the — noon precisely [*the time appointed for the first meeting being a sitting to surrender and conform*], there and then to surrender and conform to the bankruptcy laws, as the person appointed to represent the bankrupt.

Dated this — day of —, 186—. —, Registrar.

Further Endorsement to be made on Adjudication at First Meeting.

C. C. Order 42. Take notice that you, *C. D.*, are required to attend personally at the sitting of the court to be held on the — day of —, 186—, at — of the clock in the — noon precisely, being the day appointed for the passing of the last examination of the bankrupt, when and where you are required as his representative to surrender yourself, and to make a full discovery and disclosure of the estate and effects of the bankrupt. And further take notice, that you are required to prepare a statement of accounts, and to file the same in court *ten* days at least before the day so appointed for such last examination, according to the form prescribed by general orders.

Form 64.

Dated this — day of —, 186—. —, Registrar.

Further Endorsement to be made where last Examination adjourned.

C. C. Order 42. Take notice that you, *C. D.*, are required to attend personally at the sitting of the court to be holden on the — day of —, 186—, at — of the clock in the — noon precisely, by adjournment from the — day of —, 186—, being the day allowed for finishing the examination of the said bankrupt, when and where you are required to surrender, and make a full discovery and disclosure of the estate and effects, and finish the examination of the said bankrupt.

Dated this — day of —, 186—. —, Registrar.

GENERAL FORMS IN ALL CASES.

No. 32.

Statement to be filed in Court, by Debtor petitioning for Adjudication against himself, of Debts, &c.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sect. 93.
C. C. Orders 21, 34.

I, *A. B.*, of —, in the county of —, make oath and say, that the following statement, signed by me, is a full, true and accurate statement of my debts and liabilities of every kind, and of the names, descriptions and residences of my creditors, and of the causes of my inability to meet my engagements.

Sworn at —, in the county }
of —, this — day of }
—, 186—. }

Before me, —.

(Signed) *A. B.*

STATEMENT.

F. N.B.—Where the bankrupt has a set-off against a creditor, the whole amount due to the creditor must be entered without deduction of the set-off, but the amount due from the creditor must be shown in the column headed set-off.

Creditors.				Amount due to each unsecured creditor, including interest and costs where due.	Nature of consideration.	Amount due to each secured creditor after deducting the value of the security.	Nature and value of security.	Set-off.	No. of debtor on list of debtors in estate paper from whom set-off is due.
No.	Names.	Descriptions.	Residence, giving No. and name of street (if any).						
				£ s. d.		£ s. d.		£ s. d.	
Totals				£					
				Total unsecured debts					
				Total of all debts					

The causes of my inability to meet my engagements are [*here state them, and if bankrupt or insolvent previously, state the day and year, and the court in which he was so*].

(Signed) A. B.

COUNTY COURT BANKRUPTCY FORMS, 1863.

No. 33.

Estate Paper.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

BOOKS OF ACCOUNT AND VOUCHERS.

As follows :—

LIST OF DEBTORS.

General Orders
23, 24.

N.B.—Where a debtor has a set-off against the bankrupt, the whole amount due from the debtor must be entered without deduction of the set-off, but the amount due from the bankrupt must be shown in the column headed set-off.

[illegible]

PROPERTY IN POSSESSION.

Real and personal estates and effects which were in my possession, enjoyment or control, or which were held by any other person or persons in trust for my use, or to the possession or enjoyment of which I was entitled at the time of subscribing my petition.

		Supposed value.
		£ s. d.
1.	Interests in land.	Freehold, copyhold and leasehold property, with local description, names of tenants, and annual rent of the same ; and statement of incumbrances (if any) thereupon, with the dates thereof ..
2.	Personal property.	Cash and bank notes Household goods and furniture, at Jewels, trinkets and ornaments of the person .. Plate, linen and china Wines and other liquors Books, prints and pictures Horses, cows and other animals Carriages Farming stock and implements of husbandry .. Stock in trade in my business of Machinery and utensils in my business of .. Ships and shares of ships: viz. Bills, promissory notes, bonds, and other personal property not before specified
3.	Property in the funds, annuities, shares, &c.	Annuities, money in the public or other funds, shares in canal and other companies; showing in whose name the same are standing, also when and by whom the last dividend or other payment was received in respect of the same
4.	Unpaid legacies.	Legacies due or payable at a future time or times, but unpaid; with all particulars concerning the same

PROPERTY IN REVERSION, &c., PLACES, PENSIONS, RIGHTS AND POWERS.

N.B.—Contingent as well as vested interests must be entered.

Real and personal estates and effects in which I have any interest in reversion,
remainder or expectancy.

		Supposed value of my interest if now to be sold.
		£ s. d.
1. Interests in land.	Freehold, copyhold and leasehold property, with names and description of persons now enjoying the same, and the annual value thereof; also the nature of my interest therein, and from whom and in what manner it is derived	
2. Personal pro- perty.	Personal property, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom, and in what manner it is derived	
3. Property in the funds, annuities, shares, &c.	Annuities, money in the public or other funds, shares in canal and other companies; showing in whose names the same are standing, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom, and in what manner it is derived	
4. Places and pensions in possession or reversion.	Places of benefit or advantage held by me, with the salaries, fees and emoluments thereof; also all pensions and allowances in possession or reversion held by me or by any other person or persons for me or on my behalf, or of and from which I derive or may derive any benefit or advantage	
5. Rights and powers.	Right and powers, which I or any other person or persons in trust for me, or for my use, benefit or advantage, am or are in any manner seised or possessed of, or interested in or entitled unto, or which I or any other person or persons in trust for me, or for my benefit, have any power to dispose of or charge for my benefit or advantage.	

Dated the — day of —, 186—.

(Signed) A. B.

No. 34.

Order giving further Time to file Statement under Section 93 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

Upon application made this — day of —, 186—, by Mr. —, the solicitor to the bankrupt, and upon reading the affidavit of —, it is ordered that the said bankrupt have — days further time, in addition to the time allowed by the County Court Bankruptcy Orders, 1863, for filing the statement, pursuant to section 93 of the above act, that is to say, until the — day of —, 186—, inclusive.

B. A. 1861, s. 93.
C. C. Orders 21,
34.

—, Registrar.

No. 35.

Declaration to be made by the Bankrupt or the Bankrupt's Wife.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, s. 211.
Sched. E.
C. C. Order 20.

I, *A. B.*, the person declared a bankrupt under a petition for adjudication of bankruptcy, filed on the — day of —, in the year of our Lord — [or I, *C. D.*, the wife of *A. B.*, declared a bankrupt under a petition for adjudication of bankruptcy, filed on the — day of —] do solemnly promise and declare, that I will make true answer to all such questions as may be proposed to me respecting all the property of the said *A. B.* and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information and belief.

(Signed) *A. B.*
[or *C. D.* the wife of the said *A. B.*]

No. 36.

Warrant of Seizure.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sect.
108.

Whereas a petition for adjudication of bankruptcy was on the — day of —, one thousand eight hundred and sixty —, filed against *A. B.*, of —, under which he — hath been duly found and declared bankrupt: These are therefore, by virtue of the said petition, and the statute in such case made and provided, to will and require, authorize and empower you, and every one of you to whom this warrant is directed, forthwith to enter into and upon the house and houses of the said bankrupt and also in all other place and places belonging to the said bankrupt where any of his goods are, or are suspected to be; and there to seize all the ready money, jewels, plate, household stuff, goods, merchandize, books of accounts, and all things whatsoever, belonging to the said bankrupt.

And that which you shall so seize you shall safely detain and keep in your possession until you shall receive other orders in writing for the disposal thereof from the registrar of this court [or from the creditors' assignee if such an officer be chosen]. And in case of resistance, or of not having the key or keys of any door or lock of any premises belonging to the said bankrupt, where any of his goods are, or are suspected to be, you shall break open or cause the same to be broken open, for the better execution of this my warrant.

Given under my hand and the seal of the court, this — day of —, in the year of our Lord one thousand eight hundred and sixty —.

To the high bailiff and others the
bailiffs of the said court, and to
all mayors, bailiffs, constables,
headboroughs, and all other her
majesty's loving subjects whom I
require to be aiding and assisting
in the execution of this my war-
rant, as occasion may require.

(L.S.) —, Judge.

No. 37.

Inventory (when required) of what has been seized under Warrant.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

C. C. Order 25.

I, *E. F.*, high bailiff [or I, *G. H.*, one of the bailiffs] of the above-named court, hereby certify that I have acted under the warrant of seizure granted by the said court in this matter, and by direction of the official assignee, that I have given attendance at the residences and places of business disclosed by the said bankrupt, and found each and every of the articles hereinafter specified at the places severally mentioned, and I hereby declare that the following statement hereunto annexed, marked with the letter A, contains a true inventory of the said bankrupt's estate and effects.

—, High Bailiff.

No. 38.

Order to sell before Choice of Assignees. Sect. 40 of "The Bankrupt Law Consolidation Act, 1849."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

Whereas it appears to me that the holding possession of the estate and effects of the said bankrupt until the meeting appointed for choosing a creditors' assignee, would be prejudicial to the said bankrupt's estate. B. L. C. A. 1849, sect. 40.
C. C. Order 28.

I have this day ordered the same to be sold and disposed of forthwith.

Given under my hand and the seal of this court, the — day of —, 186—.

(L.S.) —, Judge [or Registrar].

No. 39.

Order for Sale of Goods in reputed Ownership.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, on the — day of —.

In the matter of *A. B.*, of —, a bankrupt.

Whereas the above-named *A. B.* was duly adjudged bankrupt by this court: And whereas *L. M.* is the assignee duly appointed and chosen of the estate and effects of the said bankrupt: Now, upon the application of *I. K.*, the solicitor for the said assignee, and reading the examination of *K. S.*, the court doth find that at the time when the said *A. B.* became bankrupt he had, by the consent and permission of *N. R.* in his possession, order and disposition [*here enumerate the specific goods and chattels the subject of the order*] whereof he was the reputed owner, and that he had the said goods and chattels in his possession, order and disposition, with the consent and permission of *N. R.*, who claims to be the true owner of such goods and chattels. B. L. C. A. 1849, sect. 125.

And the court doth hereby order the said [*here enumerate the goods and chattels as before*] to be sold and disposed of by the said assignee, for the benefit of the creditors of the said bankrupt.

—, Judge.

No. 40.

Order for the Sale of Book Debts.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, on the — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

It appearing to this court that it would be for the interest of the creditors of the above bankrupt that all the book debts due or growing due to the said bankrupt, and the books relating thereto, and the goodwill of his trade or business, should be sold by auction [*or tender or private contract*] before the expiration of twelve months from the date of the adjudication of the bankrupt: It is ordered, that the said book debts, books and goodwill shall be sold by the assignee of the said bankrupt by auction [*or tender or private contract*] as soon as conveniently may be. B. A. 1861, sect. 137.
C. C. Order 45.

—, Judge.

No. 41.

Search Warrant.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

— day of —, A.D. —.

Whereas by evidence duly taken upon oath, it hath been made to appear to the satisfaction of me the undersigned, judge of the above court, acting in the prosecution of a petition for adjudication of bankruptcy filed and now in prosecution against *A. B.*, B. L. C. A. 1849, sect. 106.
Sched. V.

of —, in the county of —, bearing date the — day of —, and under which the said *A. B.* has been adjudged bankrupt, that there is reason to suspect and believe that property of the said *A. B.* is concealed in the house [*or other place, describing it, as the case may be*] of one *C. D.*, of —, in the county of —, such house not belonging to the said bankrupt: These are, therefore, by virtue of "The Bankrupt Law Consolidation Act, 1849," to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the house [*or other place, describing it, as the case may be*] of the said *C. D.*, situate at — aforesaid, and there diligently to search for the said property, and if any property of the said bankrupt shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said act.

Given under my hand and the seal of the court this — day of —, in the year of our Lord one thousand eight hundred and sixty —.

A. B. (L.S.)
—, Judge.

To the high bailiff and others the }
bailiffs of the said county court. }

If there be reason to suspect that the bankrupt and his property are concealed, alter the warrant accordingly.

No. 42.

Letter to Debtor.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the estate of *A. B.*, a bankrupt.

No. —.

—, 186—.

C. C. Order 27.

SIR,—By the books and statements of the above bankrupt, you appear to be indebted to this estate in the sum of £—, which I request may be paid to me at — office of the court in —, on or before the — day of —, 186—.

If the claim is incorrect, or any objection intended to the payment, I request the favour of being immediately informed of the grounds thereof.

I am, sir, your obedient servant,

E. F., Registrar.

NOTE.—*If this debt be not paid by the above day, interest thereon at the rate of five per cent. per annum will be demanded pursuant to the 3 & 4 Will. 4, c. 42.*

Office hours from ten till four, except, &c.

N.B.—*Bring this letter with you, or if you write refer to the estate.*

No. 43.

Second Letter to Debtor, where first Application has not been effectual.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

Estate of —.

No. —.

—, 186—.

C. C. Order 27.

SIR,—The applications I have made for payment of £—, appearing by the bankrupt's books and statements to be due by you to this estate having failed to produce a settlement, I have now to inform you that if this sum be not paid on or before the —, it will be my duty to take legal proceedings against you.

I am, sir, your obedient servant,

E. F., Registrar.

Office hours—Ten till four, except, &c.

N.B.—*Bring this letter with you, or if you write refer to the estate.*

No. 44.

Notice to Creditor.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

To C. D. [creditor].

Take notice, that your name is inserted in the statement filed by A. B., of —, who C. C. Order 23.
 was adjudicated a bankrupt on the — day of —, as a creditor of his, and that you
 can prove your debt, by declaration or affidavit, either personally at the first meeting
 of creditors to be held at —, on the — day of —, at — of the clock in the
 — noon precisely, at [here insert place of meeting], or by annexing to the form of
 proof sent herewith an account showing the amount due to you on a fair balance of
 accounts, and by declaring to the truth of and signing the same account and the proof
 in the presence of a commissioner for taking affidavits, and then sending by post such
 account and proof to the registrar of this court with the account so appended, or to the
 creditors' assignee, if one be appointed, at the first meeting aforesaid.

Dated this — day of —, 186—.

E. F., High Bailiff.

N.B.—You will not be entitled to any dividend which may be declared until you shall
 have proved your debt.

To be annexed to the Notice.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

I, C. D., of —, do declare that the statement of the debts [and of the account, if B. A. 1861, sect.
 any] between me and the bankrupt hereunto annexed, marked with the letter A, is a 144.
 full, true and complete statement of account between me and the bankrupt, and that
 the sum of — being the debt thereby appearing to be due from the estate of the
 bankrupt to me was, on or before the — day of —, 186— [the date of the adjudi-
 cation], and still is, justly due to me.

Declared at —, in the county of }
 —, this — day of —, one } C. D., creditor above named.
 thousand eight hundred and sixty }
 —, before me, —.

N.B.—The statement annexed must be signed by you and identified by the person before
 whom you declare.

No. 45.

Messenger's Memorandum of Service of Notice to Creditors.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of —, a bankrupt.

I, E. F., high bailiff [or I, G. H., one of the bailiffs] of the above court, did, on the C. C. Order 23.
 — day of —, 186—, as required by the general orders for regulating the practice
 and procedure of the county courts, made in pursuance of "The Bankruptcy Act,
 1861," transmit by post to every creditor residing within the united kingdom named
 in the statement filed by the said bankrupt, pursuant to the 93rd section of the said
 act, a notice in the form in the schedule to the said orders, informing such creditors of
 the fact of the said bankrupt having presented his petition for adjudication of bank-
 ruptcy against himself, and that each such notice contained the name and residence
 of such creditor, and the time and place of the meeting of creditors for proof of
 debts, and for choosing an assignee or assignees of the estate and effects of the said
 bankrupt, and that each such notice was addressed and posted in the name, and to the
 residence, of such creditor as so set forth as aforesaid.

E. F. [or G. H.]

No. 46.

Order to Postmaster-General.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, on the — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

B. L. C. A. 1849,
sect. 124.
C. C. Order 11.

It is ordered, that for a period of three months from the date of this order, all post letters directed or addressed to the said bankrupt at —, being the place of which he is described in his petition for adjudication of bankruptcy, shall be re-directed, re-addressed and sent or delivered by the postmaster-general, or officers acting under him, to me, the official assignee to the above estate, at this court; and a duplicate of this order has this day been transmitted by me to the postmaster-general, or officers acting under him.

—, Registrar.

No. 47.

Declaration of Proof of Debt by Creditor under Sect. 144 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

B. A. 1861, sect.
144.

I, *C. D.*, of —, do declare that the statement of the debts [and of the account, if any] between me and the bankrupt hereunto annexed, marked with the letter A, is a full, true and complete statement of account between me and the bankrupt, and that the sum of —, being the debt thereby appearing to be due from the estate of the bankrupt to me was, on or before the — day of —, 186— [the date of the adjudication], and still is, justly due to me.

Declared at —, in the county of —, —, this — day of —, one thousand eight hundred and sixty —, before me, —.	} <i>C. D.</i> , creditor above named.

No. 48.

Declaration of Proof of Debt by Agent to a Body Politic or Public Company under Sect. 104 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

B. A. 1861, sect.
144.

I, *C. D.*, agent to [here state name of body politic or company] incorporated [or authorized to sue or bring actions] do declare that I am such agent and authorized to make this proof, and that the statement of the debt [and of the account, if any] between the said body politic [or company] and the bankrupt hereunto annexed, marked with the letter A, is a full, true and complete statement of account between the said body politic [or company] and the bankrupt, and that the sum of —, being the debt thereby appearing to be due from the estate of the bankrupt to the said body politic [or company], was on or before the — day of —, 186— [the date of the adjudication], and still is, justly due to the said body politic [or company].

Declared at —, in the county of —, this — day of —, one thousand eight hundred and sixty —, before me, —.	} <i>C. D.</i> , agent to the [here state name of body politic or com- pany].

No. 49.

Affidavit in Proof of Debt under Sect. 146 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

B. A. 1861, sect.
146.
C. C. Order 9.

I, *C. D.*, of —, do hereby make oath and say [or I, *E. F.*, of —, agent to *C. D.*, of —, do hereby make oath and say], that the statement of the debt [and of the

account, *if any*] between me [*or the said C. D.*] and the bankrupt, hereunto annexed, marked with the letter A, is a full, true and complete statement of account between me [*or the said C. D.*] and the bankrupt, and that the said sum of £ —, being the debt thereby appearing to be due from the estate of the bankrupt to me [*or the said C. D.*], was on or before the — day of —, 186— [*the date of the adjudication*], and still is justly due to me [*or the said C. D.*] [*add, when affidavit is made by an agent, and I do hereby make oath and say, that I am the person in the employ of C. D., and that I am duly authorized by him to make this affidavit, and that it is within my own knowledge that this debt was incurred, and for the consideration mentioned in the statement hereunto annexed, and that to the best of my knowledge and belief the debt still remains unpaid and unsatisfied*].

Sworn at —, in the county of —, this — }
day of —, one thousand eight hundred and } C. D., creditor,
sixty —, before me, —. } [*or E. F., on behalf of C. D.*]

No. 50.

Affidavit in Proof of Debt with or without Security.

“The Bankruptcy Act, 1861.”

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

I, E. F., of —, make oath and say, that the said bankrupt was at and before the date and filing of the said petition and still is justly and truly indebted to me in the sum of £ —, for which sum of £ —, or for any part thereof, I have not nor hath any person by my order, or to my knowledge or belief, for my use had or received any manner of satisfaction or security whatsoever [*if there is no security stop here*] save and except the — hereinafter mentioned. B. L. C. A. 1849, sect. 164.

Note or bill.	Date.	Drawer.	Acceptor.	Amount.	Payable to.	When and how drawn.	Indorsers.
				£ s. d.			

Sworn at —, in the county of —, this — }
day of —, one thousand eight hundred and } G. H.
sixty —, before me, — }
—, A commissioner.

Exhibited to me this — day of —, 186—.

No. 51.

Memorandum of Expunging Proof of Debt.

“The Bankruptcy Act, 1861.”

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

Memorandum.—C. D., the — assignee of the estate of the said bankrupt, and E. F., of —, a creditor, who hath proved a debt against the estate of the said bankrupt of — pounds for goods alleged to have been sold and delivered to the said bankrupt by the said creditor before the filing of the petition of the said bankrupt having attended before the court, and the court having examined upon oath the said creditor and G. H., of —, and being of opinion that the said debt is not [*or that only part of the said debt to the amount of — is*] justly due to the said creditor, does hereby, by virtue of the statute in that case made and provided, expunge the proof of the same [*or part of the proof for the same, to the amount of —*]. B. A. 1861, sect. 155.

—, Judge.

No. 52.

Letter of Attorney.

"The Bankruptcy Act, 1861."

To *E. F.*, of —, *G. H.*, of —, and *I. K.*, of —.In the matter of *A. B.*, of —, a bankrupt.

C. C. Order 38.

B. A. 1861, sect.
116.B. A. 1861, sect.
109.B. A. 1861, sect.
185.

SIR [*or GENTLEMEN*],—I [*or we*] the undersigned hereby authorize you [*or either of you*] to attend the meeting of creditors in this matter, advertised or directed to be holden at —, or at any adjournment thereof, and then and there, for me [*or us*], and in my [*or our*] name to vote in the choice of assignee or assignees of the estate of the bankrupt, and if I am [*or we are*] chosen assignee to accept the appointment for me [*or us*], and also to vote for or against any resolution determining whether any, and if any what, allowance for support shall be made to the bankrupt up to any time not longer than the time of passing his last examination; and at the same meeting, or at any other meeting of creditors, to consider and to accept or reject any proposal which shall be made by or on behalf of the bankrupt, and to vote for or against any resolution that no further proceedings be taken in bankruptcy; and at any adjourned meeting after such last-mentioned resolution to vote for or against any resolution that the proceedings in bankruptcy shall be suspended and in what manner the estate and effects of the bankrupt shall be wound up and administered; and generally to act at all meetings of creditors and in all matters relating to the bankruptcy or the administration and winding-up the estate as fully and effectually as I [*or we*] could do if personally present or attending thereon; and I [*or we*] do hereby ratify, confirm and allow all and whatsoever you, or either of you, shall lawfully do or cause to be done for me [*or us*] by virtue of this letter.

Signed by *C. D.*, on the — day of —, in } *C. D.*
the presence of the undersigned } [*or C. D. for self and partners.*]
E. F. }

No. 53.

Affidavit verifying Letter of Attorney.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

C. C. Order 38.

I, *E. F.*, of —, make oath and say, that this deponent was present on the — day of —, 186—, and did see *C. D.* duly sign the letter of attorney hereunto annexed marked with the letter A, and that the name — set and subscribed against the seal of the said letter of attorney is of the proper handwriting of the said —, and that the name — also set and subscribed at the bottom of the said letter of attorney, as that of the witness attesting the execution thereof, is in my handwriting.

Sworn at —, in the county of —, on this }
— day of —, one thousand eight hun- } (Signed) *E. F.*
dred and sixty —, before me, —. }

Exhibited to me this — day of —, 186—.

No. 54.

Order giving Time to Bankrupt to surrender on account of Illness.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.B. A. 1861, sect.
140.

Memorandum.—That I —, the registrar of the above court, sat on the — day of —, 186—, at the place above mentioned, pursuant to notice in the London Gazette for that purpose; and it appearing that the said bankrupt was impeded by bodily infirmity from attending before me, and surrendering and submitting himself for examination before me:

Now I the said registrar upon reading the affidavit of — of —, in the county of —, surgeon, do allow the said impediment to be a lawful one, and do excuse the said bankrupt from attending before me this day pursuant to the said notice, and do give him such further time to surrender as may be allowed for finishing his final examination.

—, Registrar.

No. 55.

Memorandum on First Meeting.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

Memorandum.—Be it remembered that on the — day of —, 186—, being the day appointed pursuant to notice in the London Gazette for the first meeting of creditors of the said bankrupt, to be holden before the registrar of the said court, the said bankrupt duly appeared, surrendered and conformed, and also submitted himself to be examined touching the discovery of his estate and effects, when [*here insert any resolutions that were come to at such meeting*].
—, Registrar.

B. A. 1861, sect.
109.

Adjudication and first meeting advertised in London Gazette of —, page —, and — newspaper of —, page —. —, Registrar.

No. 56.

Choice of Assignee.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

The — day of —, 186—.

In the matter of *A. B.*, a bankrupt.

Memorandum.—This being the day appointed for the choice of assignees of the estate and effects of the above-named bankrupt:

B. A. 1861, sect.
116.

We whose names are hereunder written, being the major part in value of the creditors of the said bankrupt present at this meeting, who have proved their debts, have chosen and do hereby nominate and choose *C. D.* to be assignee of the estate and effects of the said bankrupt, and we do desire that the said *C. D.* may be appointed such assignee.

	£	s.	d.		£	s.	d.
...				...			

I accept the said trust and appointment.

C. D.

No. 57.

Certificate of Appointment of Assignee.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

I do hereby certify that *C. D.*, who was chosen creditors' assignee of the estate and effects of the above-named bankrupt at the first meeting of creditors, holden on the — day of —, was duly elected; and I do hereby appoint him assignee accordingly.

B. A. 1861, sect.
123.

Given under my hand and the seal of this court, this — day of —, 186—.

(L.S.)

—, Judge [*or Registrar*].

No. 58.

Allowance to Bankrupt.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

Memorandum.—This being the day appointed in the London Gazette for the first meeting and choice of assignees of the estate and effects of the bankrupt: We whose

B. A. 1861, sect.
109.

names are hereunder written, being a majority in value of the creditors present at this meeting, do determine that an allowance for support shall be made to the bankrupt of — per week, from the — day of —, 186—, the date of the adjudication, to the — day of —, 186—, the day appointed for the passing of his last examination.

No. 59.

Bailiff's Memorandum of Possession.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

B. A. 1861, sect.
108.

I, *E. F.*, high bailiff [or I, *G. H.*, one of the bailiffs] of the above-named county court, did on the — day of —, 186—, take possession of the estate and effects of the above-named bankrupt, under a warrant of seizure from this court, and kept possession of the same until the — day of —, 186—, being — days, both inclusive, and I did pay the amount of possession fees, as appears by the receipt below.

In the County Court of —, holden at —.

In the matter of —, a bankrupt.

Received of the high bailiff of the county court the sum of — pounds — shillings and — pence, being — days' possession herein at 3s. 6d. per day.

£

(Signed) *L. M.* [the person who actually remained in possession].

No. 60.

Resolution at First Meeting under Sections 110 or 185 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

B. A. 1861, sects.
110, 185.
C. C. Order 39.

Whereas at the first meeting of creditors held under this bankruptcy on the — day of — pursuant to due notice given in the London Gazette, a proposal was made by [or on behalf of] the bankrupt, which was as follows:

[Here set out the proposal.]

And whereas it appeared desirable to us whose names are hereunder written, being a majority in value of the creditors then present who have proved their debts, to resolve that such proposal should be accepted, it is resolved by us, that no further proceedings in the bankruptcy should be taken, and that this meeting should be adjourned to the — day of —, in order that notice of the resolution should be given to every creditor by the — assignee as required by law.

C. D. creditor for £—.

E. F. ditto £—.

G. H. ditto £—.

&c. &c.

No. 61.

Notice to Creditors of Adjournment of First Meeting under Section 110 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

B. A. 1861, sect.
110.
C. C. Order 40.

[Proceed as in the last form, adding to the end after names of creditors who signed it,]
I hereby give you notice of the above resolution having been passed.

X. Y., Registrar.

I, the bankrupt above named, make oath and say that the contents of this statement, and of all and every part thereof respectively, are true; and that I have parted with no other property whatsoever than that therein mentioned by gift, sale, assignment, mortgage, distress or execution, or by any means other than in the ordinary course of my trade, or ordinary domestic expenditure, since the day on which the earliest debt still unpaid by me was contracted.

Sworn at —, in the county of —, }
 this — day of —, one thousand }
 eight hundred and sixty —. }
 Before me —.

A. B.

No. 65.

Abstract of the Statement of Accounts to be sent to every Creditor who has proved.—
(Section 142 of "The Bankruptcy Act, 1861.")

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

B. A. 1861, sect.
142.

Abstract of the statement of accounts required by section 142 of "The Bankruptcy Act, 1861," filed in the said court by the above-named bankrupt, the — day of —, 186—.

186—.		£ s. d.	186—.		£ s. d.
	To amount of unsecured debts			By amount of debts ..	
				"	
				"	
	To amount of secured debts			Total amount of debts owing to bankrupt ..	
				Freehold, copyhold and leasehold property ..	
				Household goods ..	
				Horses, cows, carriages, &c.	
				Farming stock, &c. ..	
				Stock in trade, &c. ..	
				Machines and utensils in bankrupt's business ..	
				Ships and shares of ships	
				Cash, bills, promissory notes and bonds ..	
				Annuities, money in the public funds, shares in canals and other companies	
				Legacies due, but unpaid	
				Deficiency	
	Total of all debts £				

—, Registrar.

No. 66.

Official Assignee's Report.—(Section 143 of "The Bankruptcy Act, 1861.")

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., a bankrupt.

B. A. 1861, sect.
143.

In pursuance of the 143rd section of "The Bankruptcy Act, 1861," I have to report to the court that the bankrupt duly filed his statement of creditors, estate paper

and the statement of accounts, at the times and in the forms required by the statute and the general orders.

It appears from them that the bankrupt is owing—

	£	s.	d.
To unsecured creditors			
To creditors holding security			
Making the total of bankrupt's liabilities ..			
The assets surrendered by the bankrupt consists of—			
	£	s.	d.
Debts, £— of which there has been paid			
Property given up to assignees, as mentioned in estate paper, and since realized			
Total			
Property still to be realized			
Debts still unpaid			
Total assets			
Leaving a deficiency of			

[Here add the circumstances which the official assignee should report.]

N.B.—In every case there must occur circumstances either to the credit or the discredit of the bankrupt, and with which the court should be made acquainted through its officer.

Dated this — day of —, 186—.

E. F., Registrar.

No. 67.

Last Examination of Bankrupt.

“The Bankruptcy Act, 1861.”

In the County Court of —, holden at —.

In the matter of A. B., a bankrupt.

At a meeting duly held for the purpose of the bankrupt passing his last examination and making application for his discharge the — day of —, 186—. B. A. 1861, sect. 140.

I, the undersigned —, the person adjudged bankrupt under a petition for adjudication of bankruptcy filed by him on the — day of —, 186—, in this court, having on the — day of —, 186—, made and subscribed the declaration required by the statute, and being examined thereupon, say as follows:—That the list of creditors, the estate paper, and the statement of accounts delivered and signed by me, are, and every part of them is, true, and also that they contain and are a full and true disclosure and discovery of all my estate and effects, both real and personal, and how and in what manner and to whom and upon what consideration and at what time or times I did dispose of, assign or transfer any of my goods, wares, merchandise, monies or other estates and effects, and all books, papers and writings relating thereto, or which I was possessed of, or in or to which I was in anywise interested in or entitled, or which any person or persons had or hath or have had in trust for me or for my use at any time before or after the filing of the said petition, or whereby I and my family have or may have or expect any profit, possibility of profit, benefit or advantage whatsoever (except only such part of my estate and effects as have really and *bonâ fide* been before sold or disposed of in the way of my trade and dealings, and except such sums of money as may have been laid out in the ordinary expenses of myself and family). And further say, that at the time of this my examination I have delivered up to this court, or unto the assignees of my estate, all such parts of my goods, wares, merchandise, money, estate and effects, and all books, papers and writings relating thereto, as are now in my custody, possession or power (my necessary wearing apparel and the necessary wearing apparel of my wife and children only excepted).

And I further say, that I have not removed, concealed or embezzled any part of my

estate and effects, real or personal, nor any books of accounts, papers or writings relating thereto, with intent to defraud my creditors.

[Where the bankrupt is examined on special matter, and the court shall order it, his answers must be set out here in full, and the bankrupt must sign every sheet of his examination.]

The above-mentioned — were by consent of the creditors present returned to the bankrupt.

The bankrupt being asked the usual questions replied

A. B., the above-named bankrupt.

C. D., Judge of the said Court.

No. 68.

Order annulling an Adjudication.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

C. C. Order 21.

Form 32.

Whereas a petition for an adjudication of bankruptcy was filed by the bankrupt against himself on the — day of —, 186—, under which petition an adjudication was made on the — day of —, 186—: And whereas it appears that the bankrupt has neglected to file the statement of his debts and liabilities in accordance with section 93 of the above act and the general orders — [or must have known that the debts justly due and proveable under the bankruptcy exceeded the sum of £300, or that proceedings in bankruptcy against the bankrupt are pending in the, here state the court in which they are pending], it is ordered that the adjudication made against the said bankrupt be hereby annulled.

No. 69.

Warrant of Committal of Bankrupt or other Party for unsatisfactorily answering, or for refusing to sign his Examination.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sect.
112.
Sched. C.

Whereas E. F., the said — [or G. H. —, of —, in the county of —], was on the — day of — duly sworn and examined in this court; and the said — was again on the — day of — duly sworn and examined in this court; as by the examination and deposition of the said — now on the file of proceedings in this matter will appear:

And whereas the answers of the said —, as now so appearing in said examination and deposition, are unsatisfactory [or the said — refused to subscribe and sign his said examination and deposition]:

These are therefore to authorize and require you, immediately upon the receipt hereof, to take into your custody the said — and him safely to convey to her majesty's prison of — and him there to deliver to the governor of the said prison, who is hereby authorized and required to receive the said — into his custody there, and him safely to keep and detain, without bail, until this court, or the court of appeal in chancery sitting in bankruptcy, shall make an order to the contrary; and for so doing this shall be your sufficient warrant.

Given under the seal of the court, this — day of —, 186—.

(L.S.)

J. K., Judge.

To — and to A. B., high bailiff, and other the bailiffs of the said court — governor of the said prison, or his deputy there.

No. 70.

Warrant against any Person disobeying any Rule or Order of Court.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sect.
226.
Sched. F.

Whereas by a rule [or an order] of this court, bearing date the — day of —, made for enforcing the purposes and provisions of "The Bankruptcy Act, 1861, [or if

of any other act hereafter in force relating to the subject-matters of this act, or made or entered into by consent for carrying into effect any of such purposes or provisions, alter the recital accordingly], it was ordered that [&c. &c. as in the rule or order]:

And whereas it is now proved that after the making of the said rule [or order], that is to say, on this — day of — a copy of the said rule [or order] was duly served on the said — personally, and the original rule [or order] at the same time shown to him, but the said — then refused [or neglected] to obey the same, and hath not as yet obeyed the said rule [or order]:

These are therefore to will, require, authorize and empower you immediately upon receipt hereof, to take into your custody the body of the said *A. B.*, and him safely to convey to her majesty's gaol [or prison] of — [or called —], and him there to deliver to the governor [or keeper] of the said prison, together with this precept; and the governor [or keeper] of the said prison is hereby required and authorized to receive the said *A. B.* into his custody, and him safely to keep and detain, without bail or mainprise, until this court, or the court of appeal in chancery sitting in bankruptcy, shall make order to the contrary; and for so doing this shall be your sufficient warrant.

Given under my hand and the seal of the court, this — day of —, in the year of our Lord one thousand eight hundred and sixty —.

(L.S.)

A. B., Judge.

To *C. D.*, high bailiff and others the bailiffs of the said court, and to the keeper of her majesty's prison [or gaol] of [or called —], or his deputy there.

No. 71.

Clear Statement of Charge to be delivered to Bankrupt under Sect. 159 of "The Bankruptcy Act, 1861."

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

Whereas the said bankrupt did on the — day of —, 186—, pass his last examination, and did on the same day apply for an order of discharge; and whereas the court, being of opinion that there was ground for charging the said bankrupt with acts or conduct amounting to a misdemeanor under "The Bankruptcy Act, 1861," did, the bankrupt consenting thereto, direct a clear statement of the charge to be delivered to the said bankrupt, and did appoint a court to be holden the — day of —, 186—, for trying the said bankrupt on such charge: Now I, the high bailiff, do hereby inform you of the day above appointed to try you on this charge, and do deliver to you, the said bankrupt, the following clear statement of the charge made against you, that is to say [here set out the charge as in an indictment].

B. A. 1861, sect. 159.

C. D., High Bailiff.

No. 72.

Affidavit of Delivery of Clear Statement.—(Sect. 159 of "The Bankruptcy Act, 1861.")

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

I, *E. F.*, high bailiff [or *I. G. H.*, one of the bailiffs] of the above-named court, make oath and say that I did on the — day of —, 186—, serve the above-named bankrupt with a clear statement of the charge made against him under the provisions of the above act, a true copy whereof is hereunto annexed, marked with the letter A, by delivering the said clear statement to and leaving the same with the said bankrupt.

B. A. 1861, sect. 159.

Sworn at —, in the county of }
—, this — day of —, }
186—, before me, }
—, Registrar.

Signed *E. F.* [or *G. H.*]

No. 73.

Appointment of Prosecutor.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.B. A. 1861, sect.
159.

Form 71.

Whereas the said bankrupt did, on the — day of —, 186—, pass his last examination, and did on the same day apply for an order of discharge; and whereas the court being of opinion that there was ground for charging the said bankrupt with acts or conduct amounting to a misdemeanor under "The Bankruptcy Act, 1861," did, the bankrupt consenting thereto, direct a clear statement of the charge to be delivered to the said bankrupt, and did appoint a court to be holden on the — day of —, 186—, for trying the said bankrupt: Now I, the judge of the said court, do in pursuance of the said act, appoint — to act as prosecutor on such trial.

Given under my hand and the seal of the court, this — day of —, 186—. (L.S.) —, Judge.

No. 74.

Pleas to clear Statement.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, on the — day of —.

In the matter of *A. B.*, of —, a bankrupt.B. A. 1861, sect.
159.

I, the undersigned *A. B.*, having on the — day of —, 186—, delivered to me the clear statement of the charge made against me of acts or conduct amounting to a misdemeanor under "The Bankruptcy Act, 1861," and which said clear statement has now in my hearing been read in open court, say that I am [or not] guilty.

A. B.

No. 75.

Conviction of Bankrupt of Misdemeanor by a Judge.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt.

At a sitting of the County Court of —, holden at —, this — day of —, 186—.

B. A. 1861, sect.
159.

Form 71.

Whereas the said *A. B.*, having been adjudged bankrupt, did, on the — day of —, 186—, pass his last examination, and did on the same day apply for an order for his discharge; and whereas the court being then of opinion that there was ground for charging the said bankrupt with acts or conduct amounting to a misdemeanor under "The Bankruptcy Act, 1861;" that is to say [*here set out the offence as in the clear statement of the charge*], did, the bankrupt consenting thereto, direct a clear statement in writing of the charge to be delivered to the said bankrupt, and the same statement was delivered accordingly: and whereas the court did appoint this day for trying the said bankrupt upon such charge, and the court did direct *C. D.*, the creditors' assignee [*or official assignee, or a creditor of the said bankrupt*] to act as prosecutor on such trial, and upon the day so appointed as aforesaid the said bankrupt surrendered and pleaded not guilty.

Now I, the judge of the said court, do adjudge that the said *A. B.* is guilty, that the said *A. B.* did, contrary to the form of the statute in that case made and provided [*here set out the offence as in the clear statement of charge*]. And I do adjudge that the said *A. B.* for his [*or her*] said offence shall be imprisoned in — gaol [and there kept to hard labour] for the space of —.

—, Judge.

No. 76.

Conviction of Bankrupt of Misdemeanor by Verdict.

"The Bankruptcy Act, 1861."

In the matter of *A. B.*, of —, a bankrupt.

At a sitting of the County Court of —, holden at —, this — day of —, 186—.

B. A. 1861, sect.
159.

Whereas the said *A. B.*, having been adjudged bankrupt, did, on the — day of —, 186—, pass his last examination, and did on the same day apply for an order

for his discharge: and whereas the court being then of opinion that there was ground for charging the said bankrupt with acts or conduct amounting to a misdemeanor under "The Bankruptcy Act, 1861;" that is to say [*here set out the offence as in the clear statement of charge*], did, the bankrupt consenting thereto, direct a clear statement in writing of the charge to be delivered to the said bankrupt, and the same statement was delivered accordingly: and whereas the court did appoint this day for trying the said bankrupt upon such charge, and the said bankrupt requiring it, the court did summon a jury for such purpose, and the court did direct *C. D.*, the creditors' assignee [*or official assignee, or a creditor of the said bankrupt*], to act as prosecutor on such trial, and upon the day so appointed as aforesaid the bankrupt surrendered and pleaded not guilty, and the jury being so summoned as aforesaid, and of the jury so summoned as aforesaid *C. D.*, *E. F.*, *G. H.*, &c., were called and sworn to try the bankrupt upon the said charge, and give a true verdict according to the evidence.

And whereas the said jury did by their verdict find the said *A. B.* guilty, and the said *A. B.* did, contrary to the form of the statute in that case made and provided [*here set out the offence as in the clear statement of charge*].

Now I, the judge of the said court whose name is hereunder written, do therefore adjudge that the said *A. B.* for his [*or her*] offence shall be imprisoned in — gaol, [and there kept to hard labour] for the space of —.

—, Judge.

No. 77.

Warrant of Committal for Misdemeanor.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

Whereas *A. B.*, of —, was this day duly convicted by [*or before*] me, the judge of the said court acting in prosecution of an adjudication of bankruptcy against the said *A. B.*, for that the said *A. B.* did contrary to the form of the statute in that case made and provided [*here set out the offence as in the clear statement of charge*], and I did adjudge that the said *A. B.* for his [*or her*] offence should be imprisoned in — of — in the county of — [and there kept to hard labour] for the space of —.

B. A. 1861,
sects. 159, 221.

Form 71.

These are, therefore, to will, require and authorize you, the high bailiff and others the bailiffs of this court, immediately upon receipt hereof, to take into your custody the body of the said *A. B.*, and him safely to convey to her majesty's gaol of —, and there deliver him to the governor [*or gaoler*] thereof together with this warrant; and the said governor [*or gaoler*] of the said gaol is hereby authorized and required to receive the said *A. B.* into his custody, and him safely to keep and detain with [*or but without*] hard labour for the period of —.

Given under my hand and the seal of this court this — day of —, in the year of our Lord 186—.

To —, the high bailiff and others the bailiffs of the said county court, and to all peace officers, and to the governor [*or gaoler*] of her majesty's gaol at —.

(L.S.)

(Signed)

X. Y., Judge.

No. 78.

Memorandum of granting of Order of Discharge.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, the — day of —, 186—.

In the matter of *A. B.*, a bankrupt.

At a public sitting of the court holden this day for the said bankrupt to pass his last examination, and also to make application for his discharge under "The Bankruptcy Act, 1861," (whereof and of the purport whereof the notice required in that behalf was duly given,) the said bankrupt passed his last examination, and made application for his discharge. And the court having heard what was alleged by Mr. —, the solicitor for the said bankrupt, and by Mr. —, the solicitor for the assignees, adjudged

B. A. 1861, sect.
159.

that the said bankrupt is [or not] entitled to such discharge (a) [or after suspension thereof for the period of —, the reasons for such suspension being that it appeared to the court that (*here state the reasons*), or subject to the condition (*here state condition*)].

—, Judge.

Mem.—Last examination advertised in London Gazette of —, 186—, page —, and — newspaper of —, 186—, page —, and order of discharge advertised in London Gazette of —, 186—, page —, and — newspaper of —, 186—, page —, and — newspaper of —, 186—, page —.

—

No. 79.

Order of Discharge, when granted at Last Examination.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, adjudged bankrupt on the — day of —, 186—.

B. A. 1861, sects.
159, 172.

Whereas at a public sitting of this court, held on the — (b) day of —, for the said bankrupt to pass his last examination, and also to make application for his order of discharge under "The Bankruptcy Act, 1861," (whereof and of the purport whereof the notice required in that behalf was duly given,) the said bankrupt passed his last examination, and upon application then and there made by the said bankrupt for such discharge, it was adjudged by the court that the said bankrupt was entitled to such discharge: Now, therefore, the court allows and orders such discharge accordingly (c) [or, if the discharge were suspended, then, after the words "such discharge," *proceed as follows*, after suspension thereof for the period of —, the reasons for such suspension being, that it appeared to the court that, &c., *stating the reasons*: And whereas the period of suspension has now elapsed: Now, therefore, the court allows and orders such discharge accordingly].

Given under my hand and the seal of this court on the — day of —, 186—. (L.S.) —, Judge.

—

No. 80.

Order of Discharge, when granted after Last Examination.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, adjudged bankrupt on the — day of —, 186—.

B. A. 1861, sects.
158, 159, 172.

Whereas at a public sitting of this court appointed after the bankrupt passed his last examination, and held on the — day of — (d), for the purpose of considering the question of granting to the bankrupt his order of discharge under "The Bankruptcy Act, 1861," (whereof and of the purport whereof the notice required in that behalf was duly given), it was adjudged by the court [*proceed as in the last form*].

Given under my hand and the seal of this court, on the — day of —, 186—. (L.S.) —, Judge.

(a) If suspended, alter the form accordingly, and state the reasons for such suspension.

(b) If adjourned, add, "and by adjournment on the — day of —."

(c) If the order of discharge be wholly refused, or be granted subject to any condition, or any sentence of imprisonment has been awarded, alter and state the facts accordingly. See sects. 157, 159.

(d) If adjourned, add, "and by adjournment on the — day of —."

—

No. 81.

*Warrant of Committal under Sect. 159 of "The Bankruptcy Act, 1861."**"The Bankruptcy Act, 1861."*

At the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.

Whereas *A. B.*, having been adjudged a bankrupt, did at a public sitting of this court, held on the — day of —, apply for an order of discharge: And whereas there appeared to the court to exist objection to the granting of an immediate discharge, and thereupon the court proceeded to consider the conduct of the bankrupt before and after adjudication, and the manner in and under which his debts had been contracted: And whereas the court was of opinion that [the bankrupt could not have had at the time when he contracted a certain debt proved under the said bankruptcy by *C. D.*, of —, to be due to him the said *C. D.*, any reasonable or probable ground of expectation of being able to pay the said debt; or the said bankrupt (*being a trader*) had, with intent to conceal the true state of his affairs, wilfully omitted to keep proper books; or his insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living; or the said bankrupt has put *E. F.*, one of his creditors, to unnecessary expense by a frivolous (*or vexatious*) defence to an action (*or suit*) brought (*or instituted*) by the said *E. F.*, in (*here insert the court in which proceeding taken*), against the said bankrupt to recover the sum of — pounds — shillings and — pence due from him to the said *E. F.*]: Now I therefore do adjudge that [the said bankrupt, contrary to the form of the statute in that case made and provided, could not have had at the time when he contracted the said debt any reasonable or probable ground of expectation of being able to pay the said debt, or did, with intent to conceal the true state of his affairs, wilfully omit to keep proper books of account, or did put *E. F.*, one of his creditors, to unnecessary expense by a frivolous or vexatious defence to an action (*or suit*) brought (*or instituted*) by the said *E. F.* against the said bankrupt as aforesaid, or the insolvency of the bankrupt is attributable to rash and hazardous speculation, or to unjustifiable extravagance in living.] And I do adjudge that the said *A. B.* for his offence shall be imprisoned in — of — in the county of —, for the period of — calendar months, to be computed from the day of the date hereof.

B. A. 1861, sect. 159.

These are therefore to will, require and authorize you, the high bailiff and others, the bailiffs of this court, immediately upon receipt hereof to take the said *A. B.*, and to deliver him to the governor [*or keeper*] of the [*here insert the name of prison*] together with this warrant; and you the said governor [*or keeper*] to receive the said *A. B.* into your custody, and him safely to keep and detain for the period of — calendar months from the date hereof.

Given under my hand and the seal of this court, this — day of —, in the year of our Lord 186—.

To —, the high bailiff and others
the bailiffs of the said county court,
and to all peace officers, and to the
governor [*or keeper*] of the [*here
insert name of prison*].

(L.S.) X. Y., Judge.

No. 82.

*Admission of Debt by Debtor of Bankrupt.**"The Bankruptcy Act, 1861."*

In the County Court of —, holden at —.

I, the undersigned *I. K.*, of —, do hereby in open court confess that I am indebted to *E. F.*, of —, a bankrupt, in the sum of —, upon the balance of accounts between myself and the said *E. F.*

B. L. C. A. 1849,
sect. 123.
Sched. X.

(Signed) I. K.

Signed by the said *I. K.* before me,
R. S., Registrar.

COUNTY COURT BANKRUPTCY FORMS, 1863.

No. 83.

*Order for Payment of an admitted Debt.**"The Bankruptcy Act, 1861."*

In the County Court of —, holden at —.

— day of —, A.D. —.

In the matter of *A. B.*, a bankrupt.B. L. C. A. 1849,
sect. 123.
Sched. Y.

Whereas —, of —, in his examination taken — day of —, and signed and subscribed by the said —, has admitted that he is indebted to the above-named bankrupt in the sum of — upon the balance of accounts between the said — and the said bankrupt: It is hereby ordered that the said — do pay to —, the official assignee of the estate and effects of the said bankrupt, in full discharge of the sum so admitted, the sum of — forthwith [*or if otherwise, state the time and manner of payment*], and that the said — do also pay to the said official assignee the sum of — for the costs of and incident to the summons of the said — in this behalf.

A. B., Judge.*C. D.* Registrar.

If the court shall not adjudge the costs of and incident to the summons to be paid by the person summoned, or if the court shall adjudge the official assignee to pay to the person summoned his costs out of the estate and effects of the bankrupt, alter the form accordingly.

No. 84.

*Audit Form and Assignees' Debtor and Creditor Account.**"The Bankruptcy Act, 1861."*

In the County Court of —, holden at —.

In the matter of *A. B.*, of —, a bankrupt.B. A. 1861, sect.
129.

Debtor and Creditor Account rendered by the Creditors' Assignee of the Estate of the said Bankrupt.

*Dr.**Cr.*

Date.	Receipts.	Amount.	Date.	No. of voucher.	Payments.	Amount.
		£ s. d.				£ s. d.

Examined and passed this — day of —, 186—.

—, Registrar.

B. A. 1861, sect.
118.

[A similar form may be used for the account to be rendered by the registrar, and also, by adding particulars of outstanding property not recovered, and of payments to be made, may be used for the purpose of a dividend.]

B. A. 1861, sect.
174.

When the account is rendered by a creditors' assignee, it should be verified upon oath as follows:—

B. A. 1861, sect.
179.

I, —, of —, the creditors' assignee of the estate and effects of the above-named bankrupt, make oath and say that the account above written is a full, true and faithful account of my receipts and payments as such creditors' assignee up to the — day of —, 186—.

Sworn at &c.

Before me, —.

N.B.—Instead of the registrar rendering an audit account, it will be sufficient if the judge examine and pass the account in the ledger.

No. 85.

Resolution of Dividend.—(Sect. 174 of "The Bankruptcy Act, 1861.")

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —, on the — day of —, 186—.

In the matter of *A. B.*, of —, a bankrupt.

This being the day appointed for the purpose of receiving from the assignee a statement of the whole estate of the bankrupt as ascertained, and of all the receipts and of all payments thereout, made or to be made, ten days' notice whereof having been given in the London Gazette and in two local newspapers, and the said assignee having duly rendered the said statement and the same having been examined; and it appearing to the creditors present [*or when no creditors are present, to me the creditors' (or official) assignee*] that [*in the case of a further dividend add these words: after payment of the creditors or claimants who have proved or claimed, since the last dividend was declared, the sum of — shillings in the pound — in proportion to their several debts*] there is a balance to the credit of the estate amounting to £ —*, the said creditors did resolve and direct that the sum of — (part of the said balance of £ —) should be forthwith divided among the creditors of the said bankrupt who have proved their debts, and among the claimants when they shall have substantiated their claims, after the rate of — in the pound, in proportion to their several debts.

B. A. 1861, sect. 174.

*[*if no creditors are present leave out from here and add, And I do therefore declare, in pursuance of general orders, that the sum of £ —, part of the said balance of £ —, be forthwith divided among the creditors of the said bankrupt who have proved their debts, and among the claimants, when they shall have substantiated their claims, after the rate of — in the pound in proportion to their several debts.*]

C. C. Order 48.

No. 86.

List of Creditors entitled to Dividend.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

List of creditors who have proved, with the amount of dividend declared at the rate of — in the pound to which each is entitled out of the sum set apart for the payment of the dividend, at a meeting of creditors held on the — day of —, 186—.

B. A. 1861, sect. 178.

No.	Creditor's name.	Description.	Residence.	Sums proved or claimed.	Dividend.	Date of payment.	Securities exhibited or other remarks.	Dividends unclaimed.

(Signed) —, Registrar.

N.B.—This list may be written in a book if preferred.

No. 87.

Notice of Dividend.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of *A. B.*, a bankrupt.

SIR,—I have to inform you that you may, upon application at my office on any — or —, after the — day of —, between the hours of — at —, receive a dividend due to you in the above estate, amounting to £ —.

B. A. 1861, sect. 178.

COUNTY COURT BANKRUPTCY FORMS, 1863.

The bills and securities (if any) exhibited at the time of the proof of your debt must, *with this notice*, be produced to me before the dividend can be paid.

On the receipt below being signed by the creditor and this paper being forwarded to the registrar, together with all bills, notes and securities, a cheque or post-office order will be transmitted by post for the above amount of dividend, if you shall, in writing, so request.

I am, sir, your obedient servant,
E. F., Registrar.

Received the — day of —, 186—, from the registrar the sum of — pounds
— shillings and — pence, being the amount of the above dividend.

£

No. 88.

Summons to Witness.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, a bankrupt.

B. L. C. A. 1849,
sects. 100, 120.

B. A. 1861, sects.
58, 63, 189.

By virtue of a petition for adjudication of bankruptcy filed against himself by the said bankrupt, these are to will and require you to whom this summons is directed personally to be and appear before the judge of the said county court at — on the — day of — at — o'clock in the — noon, then and there to be examined by virtue of the said petition and the statute in such case made and provided [*if the witness be required to produce any books and papers, add, and also that you bring with you and produce at the time and place aforesaid a certain book called, describe the particular books and papers to be produced, and all other books, papers, deeds, documents and writings in your possession or power in any manner relating to the said bankrupt, his trade, dealings and estate: and if the witness be summoned as a party suspected of having any part of the bankrupt's estate or effects in his possession, add, and take notice that you are summoned as a party suspected of having part of the bankrupt's estate and effects in your possession*].

And hereof you are not to fail at your peril.

Given under my hand and the seal of this court, this — day of —, 186—.
(L.S.) —, Registrar.

No. 89.

Form of Receipt to Debtor of Bankrupt.

"The Bankruptcy Act, 1861."

No. —.	No. —.	⌘⌘	N.B.—This receipt being given under bankruptcy requires no stamp.
Date —.		⌘⌘	No. —.
Estate —.		⌘⌘	COUNTY COURT OFFICE, —, 186—.
Debtor —.		⌘⌘	Received of Mr. — the sum of — pounds
No. —.		⌘⌘	— shillings and — pence, due to the estate
Amount —.		⌘⌘	of —, bankrupt.
Received by —.		⌘⌘	£ —
		⌘⌘	E. F., Registrar.

No. 90.

Advertisement of Adjudications and First Meeting of Creditors in London Gazette.

"The Bankruptcy Act, 1861."

B. A. 1861, sect.
109.

C. C. Order 16.

(1.) A. B., of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy filed in the county court of —, holden at —, on the — day of —, 186—, are hereby required to surrender themselves to —, a registrar of the

said court, at the first meeting of creditors to be held before the said registrar, on the — day of —, 186—, at — o'clock in the — noon precisely, at the said court [or at —].

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

(2.) John Brown, of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy *in formâ pauperis* filed in the county court of —, holden at —, on the — day of —, 186—, is hereby required to surrender himself to —, a registrar of the said court, at the first meeting of creditors to be held before the said registrar, on the — day of —, 186—, at — o'clock in the — noon precisely, at the said court.

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

(3.) William Dean, of —, having been adjudged bankrupt by a registrar of the court of bankruptcy [or as the case may be], attending at the — gaol on the — day of —, 186—, and the adjudication being directed to be prosecuted at [state the court], is hereby required to surrender himself to —, a registrar of the said last-mentioned court, at the first meeting of creditors to be held before the said registrar on the — day of —, 186—, at — o'clock in the — noon precisely, at —.

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

N.B.—This is all that is necessary to be sent to the Gazette, as the printer of the Gazette will add the general notice to all advertisements.

No. 91.

Advertisement of Sitting for last Examination in London Gazette.

"The Bankruptcy Act, 1861."

James Smith, of —, having been adjudged bankrupt under a petition for adjudication of bankruptcy, filed in the county court of —, holden at —, on the — day of —, 186—, [or under, &c., as the case may be,] a public sitting for the said bankrupt to pass his last examination, and make application for his discharge, will be held at the said court at —, on the — day of —, 186—, at — o'clock in the — noon precisely, the day last aforesaid being the day limited for the said bankrupt to surrender.

B. A. 1861, sect. 140.

A. B., of —, is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

No. 92.

Advertisement of Dividend Meeting in London Gazette.

"The Bankruptcy Act, 1861."

At the County Court of —, holden at —.

A. B., of —, adjudicated bankrupt on the — day of —, 186—. A dividend meeting will be held on the — day of —, 186—, at — o'clock in the — noon precisely.

B. A. 1861, sect. 174.

No. 93.

Advertisement of Order of Discharge in London Gazette.

"The Bankruptcy Act, 1861."

A. B., of —, adjudicated bankrupt on the — day of —, 186—. An order of discharge was granted by the county court of —, holden at —, on the — day of —, 186—.

B. A. 1861, sect. 172.

No. 94.

Advertisement of First Meeting of Creditors in Newspaper.

"The Bankruptcy Act, 1861."

(1.) A. B., of —, having been adjudged bankrupt in —, on the — day of —, 186—, is hereby required to surrender himself to —, a registrar of the county

B. A. 1861, sect. 109.

C. C. Order 16.

court of —, holden at —, at the first meeting of creditors to be held on the — day of —, 186—, at — o'clock in the — noon precisely, at —.

C. D. is the solicitor acting in the bankruptcy.

At the meeting the registrar will receive the proofs of the debts of the creditors, and the creditors may choose an assignee or assignees of the bankrupt's estate and effects.

All persons having in their possession any of the effects of the said bankrupt must deliver them to the registrar, and all debts due to the bankrupt must be paid to the registrar.

—
No. 95.

Advertisement of Sitting for last Examination in Newspaper.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

B. A. 1861, sect. 140.

A. B., of —, having been adjudged bankrupt on the — day of —, 186—, a public sitting for the said bankrupt to pass his last examination, and make application for his discharge, will be held at the said court at —, on the — day of —, 186—, at — o'clock in the — noon precisely, the day last aforesaid, being the day limited for the said bankrupt to surrender.

The registrar of the court is the official assignee, and C. D., of —, is the solicitor acting in the bankruptcy.

Charles Green, of &c.
John Brown, of &c.
—

No. 96.

Advertisement of Order of Discharge in Newspaper.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, adjudged bankrupt on the — day of —, 186—.

B. A. 1861, sect. 172.

An order of discharge will be delivered to the bankrupt after the expiration of thirty days from this date, unless an appeal be duly entered against the judgment of the court, and notice thereof be given to the court.

—
No. 97.

Advertisement of Dividend Meeting in Newspaper.

"The Bankruptcy Act, 1861."

In the County Court of —, holden at —.

In the matter of A. B., of —, adjudged bankrupt on the — day of —, 186—.

B. A. 1861, sect. 174.

A meeting of the creditors of this estate will be held before the registrar at — on the — day of —, 186—, at — o'clock in the — noon, for the purpose of declaring a dividend, and also whether any allowance shall be made to the bankrupt. Proofs of debts will be received, and creditors who have not yet proved and do not then prove will be excluded the benefit of the dividend.

A.—CASH BOOK.
“The Bankruptcy Act, 1861.”

RECEIPTS.						PAYMENTS.						
Date.	No. of petition.	Bankrupt's name.	By whom paid, and particulars.	Instalment book folio.	Ledger folio.	Amount.	Date.	No. of petition.	Bankrupt's name.	To whom paid, and particulars.	Ledger folio.	Amount.
						£ s. d.						£ s. d.

B.—INSTALMENT BOOK.
“The Bankruptcy Act, 1861.”

Estate of ——. Name of debtor ——. No. of debtor in statement —.

No. of petition —. Amount of debt £—.

RECEIPTS.

TRANSFERRED TO LEDGER.

Date.	Folio in cash book.	Amount.	Date.	Amount.	Folio in ledger.
		£ s. d.		£ s. d.	
	To cash			By cash	

This book is only to be used where debt is paid by instalments without having been sued for.

C.—ESTATE LEDGER.
“The Bankruptcy Act, 1861.”

Dr.		Estate of ——. No. of petition ——. Cr.									
Date.		Instalment book folio.	Cash book folio.	Amount received.	Totals and balances.	Date.		Cash book folio.	Amount paid.		Totals and balances.
									General charges.	Dividends only.	
	To cash ...			£ s. d.	£ s. d.		By cash ...		£ s. d.	£ s. d.	£ s. d.

D.—LIST OF DEBTS.
“The Bankruptcy Act, 1861.”
A List of Debts due to the Estate of —, bankrupt.

Date of first application —.					Date of second application —.					
No.	Debtor's name.	Description.	Residence.	Estate.	Amount of Debt.	Receipts.				Remarks.
						To first audit.	Ledger folio.	To second audit.	Ledger folio.	
					£ s. d.	£ s. d.		£ s. d.		

E.—REGISTRAR'S FEE BOOK.

“The Bankruptcy Act, 1861.”

In the matter of *A. B.*, a bankrupt.

Pro formâ.

Date.		Gross fees.			Sums paid for postage, printing, and copying.	
		£	s.	d.	s.	d.
	On first meeting	1	0	0		
	On an adjourned meeting or sitting	0	5	0		
	For applications for debt, 15 debtors at 6 <i>d.</i> ..	0	7	6	1	3
	For office copies of proceedings, 5 folios at 1½ <i>d.</i> each	0	0	7½	0	7½
	Drawing statement of bankrupt, and report upon the state of the bankrupt's affairs, 6 folios at 8 <i>d.</i> each folio, and printed matter charged as two folios	0	5	4	0	4
	Engrossing two copies of 12 folios at 4 <i>d.</i> a folio, and printed matter as 4 folios	0	5	4		
	Drawing abstract of account, sect. 142	0	5	0		
	Sending abstract, sect. 142, to 20 creditors at 3 <i>d.</i> each, including postage	0	5	0	1	8
	Paid for printing ditto	0	4	0	4	0
	Preparing list of creditors entitled to dividend, and forwarding statement by post to each creditor, 14 creditors at 6 <i>d.</i> each	0	7	0	2	4
	Per-centage on estate collected by official assignee, 5 <i>l.</i> per cent. on 40 <i>l.</i> so collected	2	0	0		
	Audit sum in account, 120 <i>l.</i>	0	7	6		
	First dividend meeting	0	15	0		
	Second audit, sum in account, 50 <i>l.</i>	0	5	0		
	Second dividend meeting	0	15	0		
	Stationery	0	2	6		
	Total gross fees	7	9	9½		
	Deduct sums paid thereout	0	10	2½		
	Total net remuneration	£	6	19	7	10 2½

F.—HIGH BAILIFF'S REGISTER.

"The Bankruptcy Act, 1861."

No. of peti- tion.	Name and residence of bankrupt.	Sol- itor.	Dates of						Number of creditors.	Return upon warrant.	Fees de- posited. £ s. d.	Total fees. £ s. d.	Re- marks.
			Adjudi- cation.	Receipt of proceed- ings.	Choice of assignees and other meetings.	Advertisement sent to		War- rant.	Receipt of list of creditors.	Notices posted to creditors.			
						Gazette.	Local.						
			186—.	186—.	186—.	186—.	186—.	186—.	186—.	186—.	£ s. d.	£ s. d.	

G.—HIGH BAILIFF'S FEE BOOK.

"The Bankruptcy Act, 1861."

In the matter of the petition of *A. B.*, a bankrupt.*Pro formâ.*

Date.		Net fees.			Sums paid out of fees.		
		£	s.	d.	£	s.	d.
	Attending court on adjudication and serving duplicate on the bankrupt, and affidavit of service (<i>where necessary</i>).. .. .	0	2	6			
	Preparing and executing warrant of seizure	0	5	0			
	Keeping possession—for each day, <i>4s. 6d.</i> , five days ..	1	2	6	0	17	6
	For inventory, directed by official assignee to be taken	0	5	0			
	Preparing advertisement for "Gazette," and attending to insert	0	3	4			
	Insertion of same	0	3	0	0	3	0
	Copy of "Gazette"	0	1	0	0	1	0
	The like charge for newspaper	0	3	4			
	Insertion	0	6	0	0	6	0
	Attending court	0	2	0			
	Ditto						
	Ditto						
	Ditto						
	Preparing and service of notice to creditors by post, each creditor <i>4d.</i> , 20 notices	0	6	8	0	1	8
	Ditto, if required by judge to be served personally, <i>1s. 6d.</i>						
	Mileage beyond three miles, per mile extra, <i>5d.</i> ..						
	Preparing and serving summons on witness, each <i>5d.</i> ..						
	(<i>If required to be served personally, 1s. 6d.</i>)						
	Mileage beyond three miles, per mile extra, <i>5d.</i> ..						
	Preparing advertisement for "Gazette," last examination	0	3	4			
	Insertion of same						
	Copy of "Gazette"						
	The like charge for newspaper	0	3	4			
	Insertion						
	Preparing advertisement notice for discharge	0	3	4			
	Insertion of same						
	Copy of "Gazette"						
	The same, for two local newspapers	0	6	8			
	Insertions of same						
	Preparing warrant to bring up bankrupt, and transmitting the same to gaoler, <i>2s. 7d.</i>						
	On commitment of any person by judge, executing the warrant, <i>10s.</i>						
	Necessary expenses out of pocket, submitted to and allowed by the taxing officer.						
	Messenger's man travelling to place of possession, or to execute warrant of commitment, or for any other purpose specially directed by the court, — miles, at per mile, <i>5d.</i>						

G.—HIGH BAILIFF'S FEE BOOK—continued.

Date.		Net fees.	Sums paid out of fees.
		£ s. d.	£ s. d.
	His time, — days, at per day 4s. 6d.		
	His expenses, — days, at per day, 4s. 6d.		
	If messenger directed by the court personally to travel, per mile, 7d.		
	Ditto, his time per day, 10s.		
	Ditto, his expenses, per day, 10s.		
	Received on the — day of —, from —, solicitor, by way of deposit for my fees and costs		
	Balance paid to me from estate		
	Deduct sums paid		
	Total net remuneration		

GENERAL INDEX.

ABATEMENT,

none of actions by death, &c. of assignee, 862, 863. See *Assignees*.

ABROAD,

remaining. See *Act of Bankruptcy*.

ABSENTING HIMSELF,

debtor. See *Act of Bankruptcy*.

ACCOUNTANT,

allowance for, to bankrupt, 488 et seq. See *Assets, Discovery, &c. of*.

ACCOUNTANT IN BANKRUPTCY,

duties of, on vacancy, to be performed by chief registrar, 27.

monies to be placed by official assignee to credit of, 33.

monies to credit of, to be subject to order of commissioner, 33.

orders for payment of, &c., how signed, 33.

payment or dishonour of negotiable instruments belonging to bankrupt estate to be certified by Bank of England, 34.

appointment of, 36.

general duties, 36. See *Chief Registrar's Account—Bankruptcy Fund Account—Unclaimed Dividend Account—Insolvent Debtors' Court Account*.

office of, to be abolished on vacancy, 39.

to make annual return to chief registrar, 25, 39.

to give certificate to assignee of monies or securities paid into Bank, 39.

to certify to official assignee payment into Bank of sums over 500*l.* due to bankrupt estate, with particulars of payment, &c., 39.

disqualified from parochial office, 39.

salary, 39, 40.

retiring annuity, 40.

ACCOUNTANT TO THE CROWN,

where debtor makes himself so by fraud, court may proceed, 427, 514. See *Fraudulent Extents in Aid*.

ACCOUNTS,

debtors' or bankrupts'. See *Assets, Discovery, &c. of*.

audit of. See *Audit*.

ACT OF BANKRUPTCY,

must be committed within jurisdiction, 96.

exclusive jurisdiction of Irish court over Irish bankrupts, 96.

must have been by trader formerly, 96.

i. e., must have been committed while a good petitioning creditor's debt existed, 96.

not necessarily the debt on which petition founded, 96.

petition may immediately follow upon, 97.

once committed, cannot be purged, 97.

equivocal act may be explained by evidence, 97.

if concerted, would formerly not support petition, 97.

otherwise now, 97.

submission to commit at the advice of friend, not concerted with creditor, 97.

petition must be filed within twelve months after, 97.

"departing the realm," 98.

trader residing abroad may commit by coming here and again departing, 98.

where committed by Irish trader petition must be prosecuted in Ireland, 98.

intent to defeat creditors, 98, 100, 102, 104, 105, 106—110.

"remaining abroad," 98, 99.

this is a continuing act, 99.

ACT OF BANKRUPTCY—*continued.*

- “departing from dwelling-house,” 99.
 - even though no creditor delayed, 99, 100.
 - “dwelling-house,” 99.
 - departure must be voluntary, 100.
- “absenting himself,” 100.
 - place not material, 101.
- “failing to keep appointment,” 101.
 - absence must be voluntary, 102.
 - its duration not material, 102.
 - intent sufficient, though no creditor delayed, 102.
- “keeping house,” 102, 103.
 - denial to creditors, if unordered and unsanctioned, not, 103.
 - order to servant to deny, though no creditor actually denied, is presumably, 104.
 - duration of keeping house not material, 104.
- “suffering himself to be arrested,” &c., 104.
- “yielding himself to prison,” 104.
- “suffering outlawry,” 105.
- procuring himself to be arrested, or goods or chattels to be attached, sequestered, or taken in execution, 105.
- suffering judgment to go by default, not of necessity, 105.
- seizure by sheriff is the date of the, 105, 106.
- now, having execution levied though without collusion, is, 106, 143 et seq.
- fraudulent conveyance, &c., 106, 110, 135. See *Fraudulent Conveyance*.
- consists of intent and overt act, 106.
- if creditors delayed by overt act, onus is on debtor to disprove intent, 107.
- by showing other sufficient motive or contrary intent or the like, 107, 109.
- evidence of intent may be contained in overt act or collateral matter, 107, 108.
- admissions by debtor, 108.
- acts or statements by persons other than debtor not evidence, 108.
- intent to delay, &c., persons not creditors, not sufficient, 110.
- holder of current bill is creditor for this purpose, 110.
- conditions as to act of bankruptcy by non-trader, sect. 70, Act of 1861.. 135, 136.
- court will not give leave for service abroad except on *prima facie* act of bankruptcy, 136.
- practice, 136, 137.
- form of memorandum indorsed, 137.
- “lying in prison,” &c., 137.
- time for completing act of bankruptcy by, altered, 137.
- day of arrest not included, 138.
- does not relate, 138.
- trading must have been before arrest, 138.
- imprisonment must have been continuous, 138.
- actual imprisonment the whole time not necessary, 138.
- custody may be changed, 139.
- debt must have been lawfully recoverable, 139.
- doubt as to prisoner under criminal process, 139.
- how prisoner shall answer summons, *quære*, 139.
- execution creditor now alone can make this an act of bankruptcy, 140.
- arrest commenced under civil, continued by criminal process, 140.
- lying in prison, *detained* for non-payment of money recovered by criminal process, 140.
- distinction where imprisonment is remedy to enforce fine, and where it is alternative penalty, 140.
- lying in prison not a continuing act, 141.
- escape must be actual, 141.
- filing declaration of insolvency, 141.
- now to be filed with registrar of the court, &c., 141, 142.
- declaration should refer only to present liabilities and assets, 142.
- presentation of petition in due time, though unsuccessful, makes act complete, 142. See also 167.
- declaration must be filed by debtor or with his assent, 142.
- paying or securing debt of petitioning creditor, 142.
- assignees under the later fiat entitled to recover money paid to stifle the former, 143.
- must be paid by bankrupt or with his cognizance, 143.

ACT OF BANKRUPTCY—*continued*.

- trader suffering execution to be levied, sect. 73 of Act of 1861..143.
- proviso remarked on, 144.
- semble*, debtor may defeat execution of obnoxious creditor by filing his own petition, 145.
- mode of avoiding this act of bankruptcy, 146.
- filing petition in insolvent court in England, 146.
- mode of proof of, 146.
- when petition deemed to be filed, 147.
- filing petition for arrangement under Act of 1849..147.
- did not relate to filing of petition, 147.
- filing petition by or against trader, &c., in foreign dominions of the crown, 148.
- difficulties of section 75, Act of 1861..148, 149.
- probable interpretation, 148, 149.
- must be proceeded on within two months from advertisement, 148, 149.
- mode of proving this, 149.
- debtor filing petition for adjudication against himself, 149.
- by non-payment after summons. See *Judgment Debtor Summons—Summons to Trader having Privilege of Parliament—Trader Debtor Summons*.
- by partners must be proved against each partner individually whom it is sought to make bankrupt, 176.
- notice of. See *Protected Transactions*, 413 et seq.

ACTION, RIGHTS OF,

- of bankrupt. See *Bankrupt*, 934 et seq.

ACTION, VEXATIOUS,

- defence of, ground for refusing discharge. See *Discharge, Order of*, 957.

ADJOURNMENT OF LAST EXAMINATION SINE DIE,

- court has power to adjourn *sine die*, 489 et seq. See *Assets, Discovery, &c. of*.
- in order for, liberty to apply, implied, if not expressed, 961.

ADJUDICATION,

- power of court to stay, pending time allowed for registration, 1055. See *Arrangements with Creditors*.

ADJUDICATION, PROCEEDINGS TO OBTAIN, AND CONSEQUENT PROCEDURE,

- adjudication, court to make, on certain proofs, 235.
- need not make where equitable circumstances *contra*, 235.
- court appoints official assignee immediately upon, 236.
- bankruptcy does not abate by death of bankrupt after, 236.
- bankrupt receives notice of, before advertisement, and has time to dispute, 236.
- bankrupt intending to dispute, must serve notice on petitioning creditor, 236.
- on judgment debtor summons, 151, 154. See *Judgment Debtor Summons*.
- annulling of. See *Annulling Adjudication*.
- showing cause against procedure upon, 237.
- clerical errors in duplicate of, served on bankrupt, 237.
- petitioning creditor opens *prima facie* case, 237.
- extended time for disputing adjudication, exclusive of original seven days, 237.
- if bankrupt ready to show cause within time but delayed by the court, 237.
- clause (the 104th, Act of 1849) only applies to creditor's petition, 233, 237.
- commissioner cannot review adjudication after time fixed by sect. 104, Act of 1849, 237.
- subsequent application for that purpose by appeal from order of adjudication to court of appeal, 238.
- if no cause shown in due time, adjudication to be advertised in Gazette, 238.
- advertisement earlier by consent, 238.
- where time not allowed for showing cause, advertisement to be forthwith on adjudication, 238.
- court may stay advertisement to allow bankrupt to appeal, 238.
- advertisement cannot be delayed but by special leave of court, 239.
- after bankrupt's consent, *semble*, court has no jurisdiction to stay advertisement, 239.
- unauthorized or false advertisement, insertion of, misdemeanor, 239.
- appointment of assignees, 245.

ADJUDICATION, &c.—*continued.*

- against uncertificated bankrupt, 94, 252 et seq.
- one or other will be superseded, 253.
- or impounded, 253.
- generally separate adjudication will be annulled or impounded in favour of joint, 253, 254.
- uncertificated bankrupt trading with licence of assignees, 254.
- whether outlaw may be made bankrupt, *quære*, 94, 255.
- on death of uncertificated bankrupt leaving creditors not entitled under adjudication, bill in Chancery will lie for administration, when, 255.
- action of assignees necessary in some cases to creditors' remedy, 255.
- as to foreign assets, 255.
- earlier adjudication determines assignment to assignees, 256.
- against uncertificated bankrupt, difficulty settled as to Irish traders, 256. See *Bankrupt.*
- incorporation of, distinguishable from "consolidation of estates," 688.
- adjudication notwithstanding deed of arrangement in what cases made, 1056 et seq.
- power of court to stay, pending registration of deed under sect. 192, &c., 1055.
- composition deed executed after, invalid, 1060.
- For other matters relating to adjudication, in connexion with the subject of arrangements between a debtor and his creditors. See Arrangements with Creditors, 1055 et seq.*

ADJUDICATIONS, JOINT AND SEPARATE, PROOF UNDER,

- proof by joint creditor under separate commission formerly, 653.
- separate creditor had formerly no rights under joint commission, 653.
- but could seize debtor's interest in joint property and compel severance, 654.
- practice formerly to take out joint and several commissions, 654.
- joint commission passed separate as well as joint property, 654, 655.
- joint certificate discharged separate as well as joint debts, 655.
- practice formerly where conflict of commissions, 655.
- Lord Loughborough's general order, 655.
- separate creditors formerly allowed dividend under joint commission out of separate estate, 655.
- principle that "joint assets pay joint, separate assets separate, debts," 656.
- three classes of exceptions, 656.
 - (1st exception.)
 - Lord Thurlow's practice, 657.
 - Lord Loughborough revives old practice, 657.
 - (2nd exception.)
 - petitioning creditor entitled to dividends out of separate estate, though joint creditor only, 657.
 - although separate debt due, sufficient to support petition, 657.
 - if separate adjudication annulled and joint prosecuted, petitioning creditor, though joint, may prove as separate creditor, 657.
 - petition against "surviving partner" is for joint adjudication, and bars claim against separate assets, 658.
 - but entering proof against joint assets no conclusive election, 658.
 - (3rd exception.)
 - joint creditors entitled to dividends from separate assets, where no joint estate and no solvent partner alive in the country, 658.
 - partner deemed solvent till judicially declared not so, 658.
 - single joint adventure constitutes partnership for this purpose, 658.
 - whether joint interest as well as joint obligation necessary, *quære*, 658.
 - objection to application of rule, where no joint interest, although obligation joint, 659.
 - joint obligation of suretyship not sufficient, 659.
 - nor of tenancy in common, 659.
 - "joint assets" are joint net assets after discharge of liens, 659.
 - inquiry as to existence of joint assets, 659.
 - contract of owners makes property joint or separate, 660.
 - joint property assigned to one partner, but still in order, &c., of firm, 660.
 - (4th apparent exception.)
 - joint creditors paying separate 20s. in the pound may prove against separate assets, 660.
- partner paying deficit of joint assets may prove against separate, before separate creditors can claim interest on their debts, 660.

ADJUDICATIONS, JOINT AND SEPARATE, PROOF UNDER—*continued.*

for voting on choice of assignees, joint creditors may prove against separate estate (sect. 140, Act of 1849), 661.

section 140 limited to partnerships existing at date of bankruptcy, 661.

surplus of separate estate divisible amongst firms of which bankrupt a partner, 661.

position of joint creditors, where partner dies and survivor becomes bankrupt, 661.

separate creditors choose inspector, 661.

inspector's office, nature of, 661.

not appointed till assignees chosen, 662.

costs of appointment in discretion of court, 662.

payable out of separate estate, when, 662.

joint estate, when, 662.

election of inspector cancelled, when, 662.

rights of joint creditors of two as against three or more partners, comprising the two, 662.

rights of separate creditors under joint adjudication (G. O., 19th October, 1852, r. 54), 662.

separate accounts of all insolvent firms in which bankrupt a partner, 663.

separate estate reimbursed cost of recovering joint property, 663.

joint trade continued after bankruptcy of partner, assignees share profits, 663.

separate assignees to keep distinct accounts of joint assets coming to them (rule 54, G. O., 19th October, 1852), 663.

joint and separate debts, what, 663.

parol agreement to change separate to joint, 663.

creditor of joint stock bank, joint creditor of shareholders under 7 Geo. 4, c. 46.. 664.

judgment against company worked out by *sci. fa.* against shareholder creditor, not separate creditor of latter, 664.

to change debt from joint to separate, what necessary, 664.

forbearance at request of persons severally liable, not sufficient, 664.

where joint security given for separate debt, onus on creditor to show joint authority, 665.

joint debt not converted into separate by continuing to deal with remaining partner and not striking balance, 665.

outlawry of co-defendant does not make debt separate as against remaining defendant, 665.

on death of partner, former creditors prove with subsequent against survivors, 665.

but death of partner no discharge of his estate, 665.

nor receipt of dividends from joint estate, 665.

presumption that joint debt remains joint, and *vice versâ*, 665.

original character of debt, evidence of, 666.

change of, by merger in superior security, 666.

contract to avoid merger, inferred, 667.

joint debt, no merger of, by separate judgment where co-debtors abroad, 667.

that separate security is to secure separate debt, presumption as to, 667.

proof against joint estates of different firms engaged in joint adventure, 667.

dividends in such case not paid till creditors of minor firms paid in full, or unless no assets of joint adventure, 667.

debts joint or separate at option of creditor, 667.

participation by firm in partner's breaches of trust, 667.

where partner alone cognizant, alone liable, though trust fund applied to use of firm, 668.

secus, if fund earmarked, 668.

misapplication of trust property by partners to separate advantage, firm not chargeable, 668.

unless firm being all trustees, by neglect enable partner to dissipate funds, 668.

but where firm have done their duty, not chargeable for partner's misappropriation, 670.

recognition by firm of separate debt makes it joint, 670.

option of creditor to treat dormant partner as partner, 670, 671.

or person not partner held out as such, 671.

where debt joint or separate, to go against either estate formerly, 671.

creditor holding security of two firms having common partners, whether put to election, doubtful formerly, 673.

double proof, since Goldsmid's case, not allowed, 673.

ADJUDICATIONS, JOINT AND SEPARATE, PROOF UNDER—*continued.*

rule applicable, where either of estates wound up by law of bankruptcy, 673.

estates marshalled where one reduced by proof under election, 675.

proof in respect of distinct contracts (sect. 152, Act of 1861), 675.

"distinct trades," what are (sect. 152, Act of 1861), 675.

"distinct estates," what are, 676.

"wound up in bankruptcy," whether words include arrangements with creditors, 676.

creditor holding specific security of joint property and personal security of partner, may prove on separate securities, retaining lien on joint property, 678.

secus, if he takes common mortgagee's order, 678.

position of creditor of firm who holds specific security of separate property, 678.

if debt and security both joint, security must be given up or mortgagee's order obtained, 679.

security by one partner for separate debt of another may be retained, although proof entered, 679.

partner giving mortgage for joint debt does not make it separate, 679.

creditor having two debts, one joint, the other separate, may prove on latter, while pursuing remedies against debtors on joint debt, other than bankrupt, 680.

bankrupt may not be held in execution for joint debt, while proof entered for separate, 681.

where sum jointly and separately secured and part secured by other joint and separate security, what proof allowed, 681.

no election, unless deliberate and with full knowledge, 681.

election not concluded by receipt of dividend, 681.

where mistake or surprise, new proof allowed, 681.

but election should precede dividend, generally, 681.

affidavit of debt as joint, to support joint petition, no election, 681.

petition for joint adjudication, held conclusive as to election, 681.

petition against "surviving partner," conclusive as to election of joint remedy, *semble*, 682.

no proof by partner against joint estate or separate partner, till joint debts paid in full, 682.

rule extends to nominal and to dormant partners, 682.

not released even for creditors of firm, 682.

subsistence of partnership, necessary at date of bankruptcy, 682.

proof by partner against partner, when allowed, 684.

partner paying deficiency of joint estate, may have dividends of separate estate, 684.

assignees' right to recover joint assets aliened by bankrupt after bankruptcy, 684.

payments in discharge of liabilities of firm, allowance for, 684.

where solvent partner pays debts of firm, proof for contribution against bankrupt, 684.

and may enter claim pending taking of accounts, 684.

liens of partner on property of firm or other partner, 684, 685.

no proof, *semble*, by assignees of joint stock company for contribution, 685.

official manager under winding-up acts, proof by for call, 685.

liquidators under Companies' Act, 1862, proof by for ditto, 685.

shareholders in cost-book mine, proof by, against purser, 685.

assignees of joint estate, proof by, against separate, and *vice versa*, 685.

(1) Where joint estate spent in paying separate liabilities, 685.

(2) Where partner carries on distinct trade and contracts debt with firm in "trade dealings," 686.

(3) Where partnership assets fraudulently or unwarrantably misapplied, 687.

no proof under second exception, if all partners in both firms identical, 687.

nor under third exception, if dealings, though unauthorized, entered in books of firm, 687.

onus on firm to rebut ratification, 688.

partner in firm entering into sub-partnership with another person, proof in such case, 688.

consolidation of estates with creditors' consent, 688.

effect of, 688.

- ADJUDICATIONS, JOINT AND SEPARATE, PROOF UNDER**—*continued*.
 on consolidation, proofs admitted *primâ facie*, and after transfer may be expunged, 688.
 creditor entering proofs on joint and separate bond, retains double proof on consolidation, 688.
 incorporation of adjudications distinguished from consolidation of estates, 688.
- ADMISSION OF DEBT.** See *Trader Debtor Summons*.
 by bankrupt. See *Act of Bankruptcy*.
 generally. See *Evidence*.
- ADVERTISEMENT.** See *Adjudication and Consequent Procedure*.
- ADVERTISEMENTS.** See *Notices and Advertisements*, 1105.
- AFFIDAVIT.** See *Evidence*.
 in support of judgment debtor summons. See *Judgment Debtor Summons*.
 of debt under trader debtor summons. See *Trader Debtor Summons*.
- AFFIDAVITS,**
 under condition 5, sect. 192, Act of 1861. See *Arrangements with Creditors*, 1020 et seq.—*Evidence*.
- AGENT,**
 property held by bankrupt as agent, *e. g.*, goods in hands of bankrupt as factor, does not pass, 364.
 principal may recover price from purchaser if not yet paid to factor, 365.
 so from factor's assignees, if paid after bankruptcy, subject to bankrupt's rights of set-off, 365.
 but if price received by factor, before notice not to pay given to debtor, then principal must prove, 365.
 unless money earmarked, 365.
 if bankrupt agent or trustee of friendly society, court may order payment of money received by him as such before his other debts are paid, 365, 366.
 in such case registrar to direct accountant-general or other proper officer to transfer stock to new trustee, &c., 366.
 similar enactments as to savings' bank officers, 367.
 as to local paving board treasurer, 367.
 property held by bankrupt for specific purpose does not pass, 368.
 if purpose of deposit not performed, no property passes, 368, 369.
 where bankrupt has possession only, not property, no property passes to assignees *primâ facie*, 370.
 assignees may be bound by conduct of depositor to accept trusts of deposit, 370.
 short bills do not pass to assignees of the banker with whom they are lodged, 371.
 unless by contract or course of dealing they are treated as cash by the parties, 371.
 bills ordered to be given up to customer on discharging lien of banker, and giving indemnity against liability incurred by bankers on his account, 371.
 even though credited to account as cash, 371.
Ex parte Sargeant, Ex parte Barkworth, Thompson v. Giles, Ex parte Benson, 372.
 bills sent to pay drafts and remaining in specie in the hands of the bankrupt do not pass, 373.
 or if directed to be sold and sold accordingly, proceeds do not pass, 373.
 where goods consigned for sale, proceeds to be applied to meet drafts for invoice price, bills remitted on account of proceeds pass, subject only to lien to secure drafts for invoice price in favour of drawer, 373.
 where drafts drawn against specific consignment, such consignment passes, subject to lien to secure drafts in favour of drawer, 374.
 instances of similar principle, 374, 375, 376.
 where bills are exchanged, those received by bankrupt pass to assignees, 375.
 where country bankers, depositing bills of customer with their London bankers, give the latter a lien on them for their general balance, customer is entitled to have assets marshalled, 375.
 earmarked property held by overseer of poor, &c. does not pass, 375.
 assignees liable for conduct of, where appointed by them, unless choice sanctioned by creditors, 857.
secus, if agency a necessary one, &c., 857.

ALLOWANCE,

- allowance may be made by court to bankrupt till last examination, &c., 926.
- in discretion of commissioner both before and after choice of assignees, 926.
- majority in value of creditors at first meeting determines whether any and what, to be made up to last examination, sect. 109, Act of 1861..927.
- must be made at first meeting, 927.
- grant of, by separate creditors from separate estate, 927.
- commissioner's power to grant not taken away, *semble*, 927.
- made by commissioner to widow of bankrupt dying before last examination, 927, 928.
- where bankrupt absconds, court has no power to order maintenance for his family, 928.
- allowance made under sect. 195, Act of 1849, to executors or administrators of bankrupt, 928.
- scale of, to be made to certificated bankrupt, 928.
- court had power to reduce where certificate not of first class, 929.
- bankrupt cannot claim, if dividend declared, out of sum divided, 929.
- under second bankruptcy, goes to assignees of second bankruptcy, 929.
- bankrupt formerly supposed not entitled to, till final dividend declared, 929, 930.
- under Act of 1849, dividend means dividend to creditors who, up to date of order, have proved, 930.
- bankrupt entitled to, has right to account to ascertain amount, 930.
- cannot apply for till after dividend meeting, 931.
- but afterwards assent of assignees not requisite, 931.
- statutory, debtor not entitled to, where deed executed under sect. 185, Act of 1861..931.
- application for refused, when bankrupt's conduct open to suspicion, 931.
- partner may claim in respect of dividend on separate and joint estate, 931.
- not entitled to double, 931.
- nor to any, unless joint and separate creditors paid in due proportion of debts, 931.
- nor unless joint and separate estates administered under bankruptcy, 931.
- not accruing till after second bankruptcy and order of discharge, not payable to assignees of second bankruptcy, *quære*, 932.
- majority in value of creditors at first dividend meeting have power to order, to bankrupt, on obtaining his discharge, sect. 174, Act of 1861..932.
- statutory right to, left by sect. 174, unless controlled by creditors under that section, *quære*, 932.
- subsequent dividend meetings have like power as to, *semble*, 932.

ANNUITIES, PROOF FOR. See *Proof of Debt—Surety*, 566 et seq.

- grantee of annuity could formerly prove only for arrears accrued before bankruptcy, unless annuity secured by bond forfeited before bankruptcy, 569.
- if secured by covenant as well as bond, covenant not barred as to breaches after bankruptcy, 569.
- annuity creditor may now prove, 569.
- bond conditioned for payment of sum, with interest in meantime, not annuity, 569.
- must be *bonâ fide* and not a contrivance for allowing interest, 569.
- retiring partner may contract for annuity in consideration of capital left in concern, 570.
- grantor covenanted to secure annuity on specific property if devised to him, covenant not discharged by certificate, 570.
- calculation of value of annuity, 570.
- actuarial value formerly the sole guide, 570.
- price paid now taken into consideration, 570, 571.
- form of order where consideration not a money consideration, 571.
- semble*, annuity may be valued though contingent as to coming into existence and duration, 571.
- annuitant, not proving value of annuity, barred by certificate as to instalments falling due after bankruptcy, 572.
- none against surety for payments, not yet due, as contingent debt, 578.
- whether as liability, &c., 582.
- contract to indemnify against payment of, 586, 587. See *Policy of Assurance—Contingent Debt—Contingent Liability*.

ANNULLING ADJUDICATION,

- adjudication annulled where petitioning creditor does not prosecute petition, 776.
 - in case of want of evidence to support petition, 776.
 - and no other creditor's debt substituted, 776.
 - if bankrupt shows insufficiency of petitioning creditor's debt, trading or act of bankruptcy, 776.
 - and no other creditor's debt, trading, or act of bankruptcy, substituted, Act of 1849, sect. 104..776.
 - (See *in case of adjudication on judgment debtor summons*, 151 *et seq.*)
- adjudication, annulling of and superseding, 777.
- annulling, grounds for, same as for dismissing petition on hearing, 777.
 - legal or equitable objections to jurisdiction, &c., 777.
- conditions specified in first clauses of sect. 70, Act of 1861, must be complied with in case of non-trader, 777.
- act of bankruptcy, commission of, out of realm, no ground for adjudication, 777.
- jurisdiction, English court of bankruptcy has none, over trader resident, &c., in Ireland, 778.
- residence for six months, 778.
- foreign and English jurisdiction, 778.
- concurrent practice under sect. 88, Act of 1861..778.
- jurisdiction, objection to, prior bankruptcy without certificate, 778.
- impounding of one of two fiats, 779.
- assignees, rights of, under 6 Geo. 4, c. 16, s. 127, not taken away by Act of 1849 nor by Act of 1861, *quære*, 779.
- provision (sect. 80, Act of 1861) as to presenting petition in district where bankrupt has resided, &c., directory only, *quære*, 779.
- adjudication annulled where errors in three-day statement, 780.
 - where act of bankruptcy not committed, 780.
 - where petitioning creditor's debt not due both at law and in equity, 780.
- adjudication, objections to, grounded on incapacity of person, 780.
 - infant's petition to supersede dismissed, in what cases, 780.
 - petitioning creditor's petition for, dismissed, if aware of debtor's infancy, 781.
 - See *Petitioning Creditor's Debt*.
- feme's coverture no objection to, in city of London, 781.
- onus of supporting, where bankrupt petitions to annul for want of requisites, 781.
 - sufficient legally, annulled on equitable grounds, 781.
 - ground for annulling, where petitioning creditor estopped from proving debt, 781. See *Acts of Bankruptcy by Fraudulent Conveyance*.
- but person petitioning to annul may be estopped from denying legal requisites, 781.
- trustee of deed by infant for creditors, 782.
- trading, validity of petitioning creditor's debt, &c., admission of bankrupt as to, where evidence insufficient, 782.
- but parties to fraud may be heard against their own act, 782.
- adjudication, clear evidence required to annul, 782.
- court directs issue as to facts, 783.
- but verdicts at law not conclusive, if fraud suspected, 783.
- want of legal requisites, proof of, not supplied by petitioning creditor's assent, 783.
- petition to annul stands over, if bankrupt supports adjudication, &c., 783.
- to prevent annulment, interest of creditors to be equitable as well as legal, 784.
- adjudication, none, if act of bankruptcy more than twelve months before petition, 784.
- annulment of, in such case, 784.
- on debtor's own petition, after discharge, 784.
- order in such case, contents of, 784.
- fiats annulled for misdescription of bankrupt, 784.
- but not, if description in petition sufficient, 785.
- misdescription, to annul for, no need to show fraud or mischief sustained, 785, 786.
- annulment, proceedings as to, before Act of 1849..786. See *Adjudication, Proceedings to obtain*.
- act of bankruptcy, where security given or money paid to petitioning creditor, Act of 1849, sect. 71..786.
- court in such case may proceed with adjudication or annul and allow new petition, 786, 787.
- petitioning creditor refunding debt received in ignorance, fiat held valid, 787.
- no fiat in bankruptcy to be annulled, by reason only of fiat having been concerted between bankrupt and creditor, &c., Act of 1849, sect. 115..787, 788.

ANNULLING ADJUDICATION—*continued.*

- sed vide* cases, where fiat concerted, &c., not supported, 788.
 adjudication for purpose other than proper object of fiat, bad, 788.
 but by creditor to defeat execution against bankrupt, if without collusion, &c., good, 789.
 so of fiat got to defeat an action, 789.
 adjudication annulled where no assets, though obtained without collusion, 789.
 debtor may now petition for, against himself, 790.
 debtor in prison adjudicated by registrar, without petition, 790.
 concert with creditors now not regarded, *semble*, 790.
 but adjudication, when object of against bankrupt law, still open to annulment, 790.
 coming to England to defeat creditors elsewhere by means of Act of 1861..790.
 adjudication, fraud to obtain, will vitiate, 791.
 annulled on petition of bankrupt, having paid all creditors in full, &c., 791.
 or though not paid in full, if they assent, 791.
 what a sufficient assent of creditors, where all not paid in full, 791.
 assent under general power of attorney, not sufficient, 792.
 absent creditor's debt paid into court, 792.
 application to annul should be by petition, but not till advertisement of bankruptcy, 792.
 purchaser under fiat indemnified against bankrupt's judgments, 792.
 no annulment on petition of creditor, if purchases made, 792.
 nor on petition of bankrupt unless he confirms purchases, 792, 793.
 annulment refused, in what cases, 793.
 adjudication made on bankrupt's petition, annulment of, 793.
 affidavit in support in such cases, 793.
 annulment on petition of creditor seeking new adjudication, 793.
 what creditor should show, 793.
 provisions of Act of 1849 for composition after bankruptcy, repealed by Act of 1861..794.
 bankrupt now to proceed under sect. 185 et seq., Act of 1861..794.
 course begun under sect. 110, may be completed under sect. 187..794.
 no agreement good by assignees to suspend proceedings, except under statute, 794.
 impounding fiat, 794.
 fiat formerly annulled if issued to wrong place, 794.
 now London court may impound petition or judgment debtor summons, sect. 88, Act of 1861..794, 795.
 and may consolidate two or more petitions, 795.
 who may apply to annul, 795 et seq.
 annulling, any person interested in, may apply, 795.
 bankrupt may now petition for, in *forma pauperis*, 795.
 before petitioning for, for want of legal requisites, must surrender, 795.
 as to propriety of rule, *quære*, 795.
 surrender, rule requiring, limited to cases where time for has expired, 795, 796.
 petition presented within period, will be allowed without surrender, 796.
 court grants renewed fiat to take bankrupt's surrender, with a view to annul, 796.
 bankrupt petitioning to annul must abandon action and try validity of adjudication, 796.
 where purchases made under bankruptcy, bankrupt must confirm or indemnify, 796.
 finding of jury on issue directed, court not bound by, 796.
 annul, application of bankrupt to, refused where, 797.
 advertisement in Gazette evidence of bankruptcy, when, sect. 233, Act of 1849..797.
 twenty-one days named in sect. 233, Act of 1849, extended to two calendar months, 17 & 18 Vict. c. 119, s. 24..797.
 Isle of Man not within United Kingdom, 798.
 case of infant, no exception, 798.
 annulling, applications for, made after time for showing cause, expired, 798.
 must be by motion, 798.
 jurisdiction of commissioner to annul on bankrupt's application only, under sect. 104, Act of 1849..798.
 after advertisement, bankrupt must appeal against adjudication under sect. 233, Act of 1849..798.
 bankrupt's application to commissioner to annul must be for want of legal requisites, 799.
 petition presented in time allowed to be amended and served after expiration of time, 799.

ANNULLING ADJUDICATION—*continued.*

- motion for rehearing granted after twenty-one days, 799.
- applications by creditors on bankrupt's behalf, subject to same rules, 799.
- fraud held to be ground for extending time, *sed quære*, 800.
- person attainted of felony could not be heard, to supersede fiat, 800.
- annulling, applications for, not by bankrupt, or on his behalf, not limited as to time, 800.
- any creditor may petition for, and without proving, 800.
- petition in such case to state that debt due when petition for adjudication filed and still due, 800.
- debt must continue due at hearing, 800.
- annul, creditor may apply to, for benefit of creditors, 801.
 - assignees may apply, 801.
 - their application may be for defects on face of proceedings, 801.
 - assignee petitioning to, and having sufficient debt, should pray leave for new adjudication, 801.
 - any one may petition to, showing grievance from adjudication, 801, 802.
 - partner of bankrupt may petition, or mere stranger summoned to give evidence, 802.
- adjudication not annulled after certificate, except for fraud, &c., 802.
- but delay may be accounted for, 802.
- acquiescence or gross delay will bar petition, 803.
- petition of single creditor, to annul for fraud, &c., should pray what, 803.
- for practice as to petitions. See *Interlocutory Applications*.
- single creditor may petition in case of legal invalidity, 803.
- petition to annul, with consent of creditors, to be signed by those proving, 803.
- court will annul, without directing issue, if facts clear on petition and affidavits, 803.
- court directing issue, states terms of, who to be plaintiff and defendant, &c., 804.
- when issue tried, court annuls adjudication or dismisses petition, 804. (*See further as to trial of issues, pp. 755, 757.*)
- as to costs, 759 et seq.
- order to annul, must correspond with petition in name of bankrupt, &c., 805.
- when adjudication annulled, certificate, &c., of no effect, 805.
 - estates conveyed to assignees, divested, 805.
- but title to property sold not to be impeached, except within limited time, 806.
- bankrupt applying to annul must confirm sales, 806.
- adjudication, petition for, against two or more may be annulled as to one and not as to others, 806.
- order annulling fiat not retrospective for all purposes, 806.
- creditor abandoning action to prove, may again proceed with, where adjudication annulled, 806.
- persons from whom property recovered by assignees, discharged, though fiat annulled, 807.
- upon order to annul, jurisdiction of court ceases, 807.
- adjudication annulled under sect. 199, Act of 1861..1055.
 - but if made, court will allow choice of assignees, 1055, 1056.
 - assenting creditor, under deed of arrangement, may petition for, 1056.
 - power of court to stay, pending time allowed for registration, 1055. See *Arrangements with Creditors*.

APPEAL,

- where motion for new trial should now be heard, 64.
- orders of court of, to have effect of judgments, 64, 65.
- court of, will not interfere, in general, where matters lie particularly within discretion of primary court, 163.
- For practice on re-hearings. See Interlocutory Applications, Practice on, 774 et seq.*
- from registrar to commissioner, 19, 54, 55.
- registrar to attend court of, 22.
- office of registrar of, 22.
- from county court, 57.
- ancient rule as to, in bankruptcy, 60.
- given by statute to lord chancellor, 1 & 2 Will. 4, c. 56, and from him by leave to House of Lords, 60.
- jurisdiction of court of review transferred to vice-chancellor, 60.
- under Act of 1849..60, 61.
- from vice-chancellor to lord chancellor, 61.
- court of appeal in chancery instituted, 61.

APPEAL—*continued*.

- jurisdiction of vice-chancellor in bankruptcy transferred to court of appeal in chancery, 61, 62.
- to House of Lords, 62.
- jurisdiction of lord chancellor under 14 & 15 Vict. c. 83..62.
- law as to, not altered by Act of 1861..63.
- court of, may try issues of fact by jury, 63, 64.
- may direct issues to courts of common law, 64.
- from commissioners to be entered within twenty-one days, and duly prosecuted (sect. 12, Act of 1849), 808.
- how made to court of appeal in chancery, 808.
- re-hearing, applications for, granted only for fraud or discovery of new evidence, 808.
- limitation of time for appealing, to what acts and decisions applicable, 808.
- advertisement in Gazette evidence of fact and date of bankruptcy, when (Act of 1849, sect. 233), 809.
- time for appealing, extension of (Act of 1854, sect. 24), 809.
- applications to annul for want of requisites, how made, 809, 810.
- deposits on, how regulated, 810.
- amount of, fixed by commissioner, 810.
- deposits in county court appeals, 810.
- to court of appeal brought on by motion, 810.
- no new evidence of issues before court below, except with leave of court of appeal, 810.
- under county court orders, notice of appeal to be left with registrar, 811.
- in bankruptcy to House of Lords, to be on special case, 811, 815.
- affidavits and documents to be used on appeal, filed with chief registrar, 811.
- appealing, limitation of time for, construed liberally, 811.
- service of petitions of appeal, former practice as to, 812.
- notices of motion on appeals, how presented and served, 813.
- hearing of cases in paper of appeals, practice as to, 813.
- court of appeal in bankruptcy, not restricted as to order to be made, 813.
- to House of Lords only for matters of law, equity, or admission or rejection of evidence, 813, 814.
- appeal, application for leave to, must be made promptly, 814.
- question must be important as well as difficult, 814.
- pending appeal, court may suspend an order, 814.
- special case for appeal to House of Lords, to be approved and certified by a judge of court of appeal, 815.
- what it should contain, 815.

APPLICATIONS. See *Interlocutory Applications*.

- under sect. 192, Act of 1861, how to be supported, 1055.
- to annul adjudication made on bankrupt's petition, affidavit in support of, 793.

APPRENTICE FEES, PROOF FOR,

- apprentices to bankrupts discharged from their indentures, 593.
- court may order sums to be paid in respect of apprentice fees, 593.
- where fee paid under agreement, but no articles executed, proof allowed, 594.
- not allowed where clerk articulated to attorney made bankrupt as scrivener, 594.

ARBITRATION,

- assignees not bound before award by bankrupt's submission to, 313, 314, 384.
- but they can take no benefit under the award unless they will be bound by the whole, 383, 384.

ARRANGEMENTS WITH CREDITORS,

- three modes of, 987.
- in two of them bankruptcy a preliminary step, 987.
- majority in value of creditors may (under sect. 110, Act of 1861), suspend proceedings in bankruptcy, 987.
- no defined scheme (under sect. 110) for winding up estate, 987, 988.
- effect of resolution (under sect. 110) upon jurisdiction of court, 988 et seq., 1058, 1059.
- assets, absolute power to deal with, vests in majority, 988.
- resolution, solicitor employed to prove debt, may oppose, 988.
- may be made after order of discharge, 988.
- whether composition can be made (under sect. 110), *quære*, 988.

ARRANGEMENTS WITH CREDITORS—*continued.*

- distribution, rules of, under resolution (sect. 110), to be as in bankruptcy, *semble*, 988.
- creditors may examine debtor as to accounts filed by him, 990.
- commissioner bound to satisfy himself as to accounts, 990.
- resolution (under sect. 110) does not prevent outlawry of bankrupt, 990.
- prevents motion to dismiss for misdescription, 990.
- creditors may resolve under sect. 110, *semble*, to wind up under deed, 990, 995.
- bankrupt may apply for discharge to court, 990.
- as to grant of, court bound by same rules as where no stay of proceedings, 990.
- whether court, after resolution under sect. 110, can order sale of goods in order, &c. of bankrupt, *quære*, 990, 991.
- advisable to obtain order for sale before resolution passed, 991.
- under sect. 185, Act of 1861, creditors may resolve that estate be wound up, 991.
- points of difference between sects. 110 and 185..991.
- registrar to report resolution under sect. 185 to court, 991.
- court to be satisfied that resolution (under sect. 185) for general benefit of creditors, 992.
- may approve of deed of arrangement if reasonable and duly executed, &c., 992.
- may direct its registration and annul bankruptcy, 992.
- as to what are reasonable terms, *quære*, 922.
- whether proposal in any case unreasonable at discretion of commissioner, 993.
- what would be unreasonable, under sect. 192, is so under sect. 185 et seq., *semble*, 993.
- but converse not maintainable, *quære*, 993.
- under sect. 187, official assignee inquires as to due execution, &c., of deed, 993.
- agreement to accept composition under sect. 230, Act of 1849, without tender, no release of bankrupt, 994.
- law similar under Act of 1861..994.
- under sect. 188, Act of 1861, court may entertain applications as to bankrupt's estate or the trusts of the deed, &c., 994.
- court to determine questions under deed by law of bankruptcy, 994.
- has general jurisdiction for working out trusts of deed, 995.
- under sect. 189, court may examine strangers as to suspected assets, debts, &c., 995.
- powers conferred by sect. 189, as to discovery of assets, &c., similar to those exercised in bankruptcy, 995.
- under sect. 136, court has jurisdiction as to disputes, &c., between assignees, creditors, &c., under deed, 995.
- this jurisdiction, where there is no bankruptcy, given by sect. 136 to court in London, 995, 996.
- release, in certain cases, conditional only by deed, 996.
- under sect. 185 et seq., same difficulty as in sect. 110, as to sale of goods in bankrupt's order, &c., 997.
- power of court to examine bankrupt as to estate, debts, &c., 997.
- under sect. 189, court cannot, unless deed produced, examine trustees, 997.
- cases in which bankruptcy is to proceed as if no resolution passed under sect. 185..998.
- course where court does not approve of deed, adjournment *sine die*, with liberty to apply, 998.
- order annulling bankruptcy to be filed and advertised, 998.
- arrangement, deeds of (under sect. 224, Act of 1849), repealed, 999.
- under Act of 1849, deed giving composition to creditors and surplus to debtor, invalid under sects. 224, 228..999.
- furniture or wearing apparel, reservation of, vitiated deed, 1000.
- under Act of 1849, deed should have provided for distribution among all creditors joint and separate, 1000.
- and (*semble*) secured and unsecured, 1000.
- under sect. 228, Act of 1849, creditors had same rights as in bankruptcy, 1000.
- and under sect. 229, might have applied to court, 1001.
- and under sect. 232, arranging debtor or creditors might have inspected books, &c., 1001.
- sects. 224 et seq., subsist, *semble*, as to deeds executed before Act of 1861..1001.
- inspectors winding up debtor's estate, not officers of court, *semble*, 1001.
- trustees ordered to pay costs caused by neglect of order of court, &c., 1002.

ARRANGEMENTS WITH CREDITORS—*continued.*

under sect. 192, Act of 1861, deeds of arrangement binding on non-assenting creditors, 1002.

conditions to be observed :

1. assent of three-fourths in number and value of creditors, 1002.
2. trustee appointed must execute deed, 1002.
3. debtor's execution to be attested by attorney, 1002.
4. deed to be left for registration within twenty-one days after execution, 1002.
5. affidavit to accompany deed as to proper majority of creditors, 1002.
6. deed to be duly stamped, 1003.
7. debtor to deliver property to trustees, 1003.

assignment of all debtor's property not necessary within sect. 192.. 1003.

nor of any property, 1003.

but benefits of deed must be for all creditors equally, 1003.

instances, 1004 et seq.

inequality in favour of dissenting creditors, 1004.

in remedy, though benefits equal, invalidates, 1004.

unfair provision, if separable, does not, 1005.

secus, where condition not capable of being rejected as repugnant, 1005.

equality must be in essence of arrangement, not on face of deed only, 1006.

majority in estimating consents of creditors, how estimated, 1006.

securities of secured creditors not to be deducted, 1007, 1008.

joint and separate creditors, relative claims of, how to be dealt with in arrangement deeds, 1008.

deed providing single composition for, held not invalid, 1009.

case where no assignment made, 1009.

where property assigned, 1009.

suggested mode of meeting difficulties, 1009.

joint assets, deed confined to, not to be registered without affidavit as to separate debts, 1010.

and such a deed not binding on separate creditors of partners, 1010.

if debtor liable secondarily only, as drawer of bill not due, holder of bill not bound by deed, *quære*, 1010.

claimant for costs recovered after execution of deed, not a creditor, 1011.

debtor, in estimating assets, cannot exclude claimant entered in schedule, 1011.

dissenting creditor not bound, *quære*, by statements in schedule, 1012.

"creditor," a person having *proveable claim* whether a debt or not, 1012.

cases as to quantum of debt, 1012.

equality of provisions of deed, 1012.

exclusion of any class of creditors, an inequality, 1012.

deed assigning all property for distribution as in bankruptcy, good, 1012.

deed void containing covenant, which may be sued on by some, but not by all creditors, 1013.

good, there being no trustee, but a third person as surety guaranteeing the composition, 1013.

unreasonable conditions, 1013.

reasonableness, *semble*, only test of, contemplated by statute, discretion of majority of creditors, 1014.

inequality, no condition unreasonable, *quære*, which does not involve (*Nicholson v. Potts*), 1015.

debtor justified, *semble*, in requiring creditor to covenant, 1015.

reasonable, *semble*, to bind creditors to do under deed what law compels under bankruptcy, 1016.

held not to be so, to require verification of creditors' debts to be as trustees should direct (*Leigh v. Pendlebury*), 1016.

(but see *Coles v. Turner*, declaring, on appeal, a similar provision to be not unreasonable, 1059.)

reasonable and unreasonable conditions, 1017.

not unreasonable to provide that deed should bind non-assenting creditors, though not operating under sect. 192.. 1017, 1018.

not unequal to reserve creditors' rights against sureties, 1018.

conditions made by statute necessary to deeds, 1001, 1018 et seq.

execution by all trustees, named in deed, indispensable, 1018.

but not necessary to validity of deed that there should be trustees, 1018.

debtor's execution may be by attorney, 1019.

execution of power of attorney does not require attestation by a solicitor (sect. 192, cond. 3), but that of deed by the attorney does, see Addenda (*Re Fulcher*).

ARRANGEMENTS WITH CREDITORS—*continued.*

- registration, office for, 1019.
- under various sections of Act of 1861, distinguishable, 1019. See *Registration*.
- deed, assents to, must be absolute before registration, 1020.
 - assents to, obtained by misrepresentation, 1020.
 - burden of proof on those supporting, 1020.
- affidavit under 5th condition, court will admit, if made by person able to depose, 1020; and see also 1059.
- assignment, absolute, of debtor's property, how far necessary under 7th condition, sect. 192..1003, 1021.
- word "immediately," in condition 7, sect. 192, how to be understood, 1022.
- where deed assigns all debtor's property, books of account to be given up immediately, 1022.
- negatives, difficulty of proving, under sect. 192..1022.
- consequent defect in trustees' title to real estate, under deed of arrangement, 1022.
- but, *semble*, cured by advertisements, under sect. 68, Act of 1849..1022.
- otherwise twelve months must elapse, 1022.
- registrar, copy of deed to be delivered to, with deed itself and affidavit, 1022.
 - also account of debts, names of creditors, &c., 1022.
- deed, creditors entitled to inspect copy of, and of account, &c., 1023.
- assent of creditors, inability of debtor to obtain (sect. 200, Act of 1861)..1023.
- negotiable securities, who are creditors upon, under sect. 200..1010, 1011, 1023.
- affidavit, form of, under 5th condition sect. 192 and sect. 200..1023.
 - contents of, 1024. See *Registration*.
- form of deed under Sched. D., difficulties as to (see *Schedule D., form of deed under*).
- deed of assignment, as to what property will pass under (see *Re Vizard's Trust*), 1027, 1060.
- deed under sect. 192, recital in, that composition to be in discharge of debts, equivalent to a release, 1027.
 - if action brought before registration, should be pleaded to further maintenance of action, 1027.
- judgment on omission to plead release, rule nisi to set aside, on what terms granted, *sed quære*; and see *Whitmore v. Wakerley*, 1027.
- although release not pleaded, process not issuable under sect. 198, without leave of court, 1028.
- majority of creditors, two creditors are, within sect. 192, where two creditors only, 1028.
- debtor, description of, in deed under sect. 192 et seq., 1028.
 - but the creditors need not be specifically named, 1028.
- evidence, unregistered deed not received in, 1031.
 - but its execution may be proved as act of bankruptcy, *sed quære*, 1031.
- word "creditors," meaning of, in sect. 194..1032.
- deed requiring registration under Act of 1861, to bear additional denoting stamps, 1032.
- as to whether such stamp duty leviable on simple composition deed, *quære*, 1032.
- all property assigned liable under sect. 195..1032, 1033.
- jurisdiction of court and rights, &c., of parties after registration of deeds, sect. 197..1033 et seq.
- same court to have jurisdiction, as if debtor bankrupt on his own petition, 1034.
- and jurisdiction as large as in bankruptcy, 1034.
- trustees, title of, relates to date of act of bankruptcy, 1034.
- may impeach fraudulent preference as assignees might, 1034.
- debts, &c., what, may be proved under deed, 1034, 1035.
- debtor, assenting or non-assenting creditors may examine, when, 1036.
- and non-assenting creditors may do so, without defining object of examination 1059, 1060.
- but creditor seeking to examine must show himself to be such, 1036.
- trustees, summons to examine, not granted except within reasonable time, *semble*, 1036.
 - court interposes only as ancillary to, in execution of trusts of deed, 1036.
 - person summoned as supposed debtor may not require trustees to prove validity of deed, 1036.
- court will order sale of book debts, goodwill, &c., 1036.
 - but not in case of deed of inspection, 1037.
 - will order letters of debtor to be re-directed to trustees, 1037,

ARRANGEMENTS WITH CREDITORS—*continued.*

whether court can order debtor to file additional accounts as in bankruptcy, *quære*, 1037.

trustees treated as officers of court, 1037.

court, jurisdiction of, not limited in matters of substance, by exception in sect. 197, *semble*, 1037.

does not extend beyond property comprised in deed, 1038.

does extend to examine debtor as to property, under composition deed, 1038.

trustees may bring actions without leave, 1038.

may not retain dividend for personal claims against creditor, 1038.

allowance, debtor cannot claim, as in bankruptcy, 1038.

assignment by partners of joint property not extended to include separate, 1038.

trustees to give account to creditors as to receipts, &c., 1038.

damages for breach of contract may be assessed under deed of arrangement, 1038, 1039.

protection to debtor after notice, &c., of filing of deed, 1039.

certificate of filing, to be, as in bankruptcy, 1039.

memorandum of registration is not, against detainer under former arrest, 1039.

what granted to debtor under arrangement clauses of Act of 1849.. 1039.

arrangement, after notice of, creditor petitioning goes on at his own risk, 1040.

"process" (in sect. 198), meaning of word, is execution, 1040.

and includes execution by writ, attachment, &c., 1040.

whether execution under "Small Debts' Act" within, *quære*, 1041.

attachment ordered not to issue without leave of Court of Bankruptcy, 1041.

validity of deed, reference directed to master, to report on, 1041.

certificate under sect. 198, is for all purposes available as a protection in bankruptcy, 1041.

As to effect, extent, &c., of protection under sect. 198, Act of 1861. See Protection from Arrest—The Bankrupt, Registration, &c.

remedies for illegal detention, cumulative, 1042.

to what arrests protection extends, 1042.

court has power, *semble*, to release bankrupt in custody under a *cap. ad resp.*, 1044.

deed of assignment is valid against a *fi. fa.* issued the same day as, but after deed executed, 1046.

arrest, court's discretion to release from, extends only to arrest on final process, 1046.

protection under registration, analogous to that under sect. 162, Act of 1849.. 1046.

registration not a discharge of prior arrest or detainer, 1047.

whether any court can discharge from such arrest, &c., except on bankruptcy of debtor, *quære*, 1047.

what court can order release of debtor arrested after protection granted, *quære*, 1047.

bankrupt might have applied to lord chancellor formerly, 1047.

course of proceeding in such case, 1047.

this practice continued under Court of Review, 1047.

sections of Act of 1849 and 1861, limiting jurisdiction of Court of Bankruptcy, 1047.

it extends under sect. 12, Act of 1849, to persons submitting to it, 1048.

statutory power of Court of Bankruptcy to grant protection limited to certain specified cases, 1048.

debtor arrested after protection order expired and before discharge, Court of Bankruptcy has no power to release, 1049.

jurisdiction of Court of Bankruptcy, cases in favour of, 1050.

of court out of which process issued, infringing protection, cases in favour of, 1050.

protection of bankrupt and privilege of witnesses, supposed analogy between, 1050, 1051.

discharge, application for, in such cases, to be to ordinary courts, *quære*, 1051.

executing process, ordinary practice as to, 1051.

order of other court directing discharge, Court of Bankruptcy will not interfere with, 1052.

discharge of debtor under arrest, Court of Bankruptcy has no power, *semble*, to order, except under sect. 112, Act of 1849.. 1052.

courts have ordered, under deed containing release or covenant not to sue, 1052.

ARRANGEMENTS WITH CREDITORS—*continued.*

- deed within sect. 187, Act of 1861, protection under, 1053.
- registration, certificate of, not conclusive of validity of deed under sect. 192.. 1053.
- debtor to procure release must prove due execution, &c., of deed, 1053.
- registration, notwithstanding certificate of, process may issue in case of fraud, &c., 1054.
- description of debtor in deed to be as full, &c., as in bankruptcy, 1054.
- execution, leave to issue, refused in case of deed under sect. 192.. 1054.
- instances,
 - leave granted, 1054, 1055.
- mode of proceeding where conflict as to whether deed good, 1055.
- applications under sect. 192, how to be supported, 1055.
- adjudication, power of court to stay, pending time allowed for registration, sect. 199.. 1055.
- petition of debtor against himself, sect. 199, extends to staying, 1055.
- adjudication annulled under sect. 199.. 1055.
- but where adjudication made, court will allow choice of assignees, 1055, 1056.
- proceedings not stayed by court, if deed plainly invalid within sect. 192.. 1056.
- adjudication, assenting creditor may petition for, in case of fraud, 1056.
- deeds of arrangement, rules of equity, apply to, where statutes silent, 1056.
- but no costs allowed of trustees under invalid deed, 1056.
- nor of creditor if petition for adjudication dismissed under sect. 199.. 1057.
- under Act of 1849, creditors affected by deed, only quoad specified debts, 1057.
- as to effect of sect. 197, Act of 1861, upon this point, *quære*, 1057.

ARREST, PROTECTION FROM. See *The Bankrupt*, 905 et seq.

ASSENT OF CREDITORS,

- inability of debtor to obtain, 1023; and see *Arrangements with Creditors*.

ASSETS, DISCOVERY, PROTECTION, AND REALIZATION OF,

- debtor against whom petition has been filed, about to leave England or to conceal his goods, may be arrested, &c., 482.
- application may be made at any time after filing of petition, 483.
- three day statement on debtor's petition, 222, 223, 483.
- estate paper in county court cases, 483.
- if not duly filed, or if materially incorrect, petition dismissed, 483.
- court may enlarge time, 483.
- bankrupt to deliver up books of account to official assignee, 484.
- commissioner may commit bankrupt for refusal, 484.
- remarks on sections giving this power, 484.
- court may give directions as to custody of books, 484.
- semble*, bound to order delivery of them if moved on behalf of creditors, 484.
- search warrants, 484, 485.
- court may summon and examine bankrupt, 486.
- if bankrupt be keeping out of way, court may issue warrant, 486.
- mode of issue and service of summons, 486.
- summons may issue at any time and disobedience to it punishable by imprisonment, 486, 487.
- summons, in common form, gives bankrupt option of appearing on either day named, 487.
- if appearance required on the first day, peremptory summons will be issued before warrant, 487.
- if bankrupt in prison, he may be brought up by warrant to surrender and be examined, 487.
- ten day statement of accounts, 487.
- expression "ten days" means ten clear days, 487, 488.
- statement to be open to creditors, 488.
- preparation for passing last examination altered, 488.
- official assignee to assist in preparing such statement, and to file therewith report upon the affairs of the bankrupt, 488.
- power to court to grant assistance to bankrupt in making out statements under special circumstances, 488.

ASSETS, DISCOVERY, &c. OF—*continued.*

- court will not make allowance for assistance merely because insufficient books or no books kept, 488.
- no allowance to official assignee, and none to accountant, unless appointed by court, 488, 489.
- duties of accountant appointed by court, 489.
- practice as to appointment, 489.
- power of appointing, when used, 489.
- registrar of county court to assist bankrupt in preparation of statement, how, 489.
- court may adjourn last examination sine die, 489.
- case in which power should be used, 489, 490.
- alternative course to commit bankrupt and allow him to take his habeas corpus, 490.
- court of appeal ought not to interfere with commissioner's discretion, except in clear case, 490.
- but has done so, 490.
- assignees ought to oppose, if accounts unsatisfactory, 490.
- court requires reason for withdrawal of opposition by assignee, 490.
- instances of unsatisfactory answers, 490.
- power to adjourn sine die should be used only to compel discovery, not indirectly to refuse discharge, 490.
- bankrupt may be committed for *contumacy* in not furnishing proper accounts, 491.
- court will not adjourn sine die if clear that no better accounts can be had, 491.
- if bankrupt be in custody, court may appoint person to attend him with books, papers, &c., to enable him to prepare balance sheet, 491.
- court may order letters addressed to bankrupt to be redirected or delivered to official assignee, 491.
- court may summon and examine bankrupt's wife, 491, 494.
- declaration need only be signed once before first examination, 491.
- court may summon persons suspected as debtors or as having bankrupt's property, 492.
- "persons suspected" means suspected by person applying for summons, 492.
- practice as to issue of summons, 492.
- bankrupt cannot obtain summons without concurrence of assignees, 492.
- commissioner may summon witnesses, though no fact in dispute, 493.
- person summoned should attend, even if improperly summoned, and, if arrested on warrant for non-attendance, has no remedy, 493.
- service of summons where person keeps out of the way, 493.
- mode of service, 493.
- object of summons should appear on its face, 494.
- if summons neglected after service, warrant may issue after reasonable time, 494.
- peremptory summons in first instance generally necessary, 494.
- person summoned must wait till examined or discharged, 494.
- witness in prison may be brought up on habeas corpus, 494.
- documents to be produced should be described in summons, 494.
- witness swearing falsely, guilty of perjury, 494.
- witness attending entitled to expenses, 494, 495.
- court cannot order property, adversely claimed, to be given up, 495.
- bankrupts and bankrupts' wives to sign declaration in Schedule E. This not to exempt from examination on oath, 495.
- person refusing to be sworn, or to answer, or not fully answering or refusing to sign examination, or to produce books, &c., may be committed, 495.
- apparent omission in section 260, Act of 1849...496.
- semble*, court can commit under its ordinary power, having authority to administer oath, 496.
- penalty on false declaration, 496.
- witness cannot object to his own examination on the ground of incompetency, 496.
- bankrupt's solicitor cannot object on the ground of privilege, 496.
- electric telegraph manager obliged to produce message, 496.
- bankrupt's partner obliged to answer and produce books of firm, 496.
- solicitor, not of the bankrupt, obliged to produce deed of the bankrupt's to prove act of bankruptcy, 496.
- mortgagee from the bankrupt may be compelled to produce mortgage deed, 496.

ASSETS, DISCOVERY, &c. OF—*continued.*

petitioning creditor to separate fiat said not to be compelled to give evidence in support of joint, *sed quære* now, 497.

quære, also as to execution creditor whose execution not levied by sale before petition filed, 497.

mere witness not bound to criminate himself, 497.

quære, how far rule applies to bankrupt, 497, 498.

court may examine witness as to person likely to afford information relative to trade, &c. of bankrupt, 498.

but not as to matters beyond *person, trade, &c.* of bankrupt, 498.

instances how far examination may go, 498, 499.

Court of Appeal slow to interfere with commissioner's discretion, 499.

will not compel witness to produce document when commissioner thinks it ought not to be produced, 499.

commissioner should not commit unless evidence wilfully evasive, 500.

examination should be confined to matters tending to disclose property, &c., 500.

denial of court's jurisdiction is no ground for refusing to answer, 500.

sufficient, if questions are put in presence of and with sanction of commissioner, 500.

what is satisfactory answering, 506.

commissioner should point out in what respect answers unsatisfactory, 501.

it is no ground for committal that other witnesses contradict the witness's evidence, 501.

his statements out of court not to be taken into consideration in estimating satisfactory character of answers, 501.

witness not heard on application for warrant against him, 501.

form of warrant of committal of bankrupt, 501.

copy of examination to be delivered to person committed, 502. See *Committal to Prison*.

concealing bankrupt's effects, 507.

allowance to persons making discovery, 508.

person who had assisted bankrupt in concealing not entitled to reward, 508.

several acts of concealment are misdemeanors, 508. See *Crimes and Penalties*.

powers of courts to assist each other, 508.

tangible property seized by messenger, 508.

chattels real to be delivered by bankrupt on pain of refusal of last examination, 508.

in case of debts admitted to be due to bankrupt estate, court may order payment, 508.

such order to have effect of judgment, 509.

section 123, Act of 1849, altered as to attestation, 509.

mode of recovering debts not admitted, 509.

set-off of mutual credits at date of act of bankruptcy, 509.

where demand may be in tort or in contract, assignees should sue in tort if there be a set-off, 510.

no set-off where cross demand accrued after act of bankruptcy, 510.

bankrupt himself should bring some actions, 510.

bill in chancery, 510.

leave of court should be obtained by assignees to sue, 510. See *Assignees*.

where bankrupt beneficially entitled to stock, court may order transfer, 510.

court after adjudication may order treasurer, &c., or agent of bankrupt to deliver amount in his hands to official assignee, &c., 511.

assignees may execute powers previously vested in bankrupt, 511.

court may order bankrupt to join in conveyances, 511.

bankrupt not ordered to convey until he has had opportunity of disputing his adjudication, 511.

goods, passing under order and disposition clause, require order for sale from court to pass the title to them, 512.

order obtained *ex parte*, 512.

sufficient if order obtained before trial of the title, 512.

effect of such order, 512.

order must identify goods, but need not name true owner, 512.

power of court over voluntary conveyances of bankrupt, 513.

gifts valid *primâ facie* against assignees, until order of court directing sale, 513.

order not conclusive on parties claiming property, 513.

ASSETS, DISCOVERY, &c. OF—*continued.*

- order for sale, where bankrupt fraudulently makes himself accountant to the crown, 427, 514.
- estates tail and copyholds of bankrupt, 514. See *Estates Tail—Copyholds.*
- pay, half-pay, salary, &c., 514.
- court will act under *this section* (134, Act of 1861) at sitting for last examination, 514.
- sequestration of clerical benefice, 514.
- does not relate to act of bankruptcy, 514.
- valuation of assets not of course now, 514.
- property in general to be sold, 514.
- reversionary life estate of non-trader not to be sold, till in possession, without leave of court, 514.
- sale to be advertised, 515.
- rules as to persons allowed to bid, 515. See *Assignees*, 847.
- assignee removed to allow him to bid, 515.
- solicitor allowed to purchase at advance on valuation, 515.
- commissioner's purchase confirmed on certificate that it was beneficial to estate, 515.
- assignee purchasing charged with loss on resale, 515.
- assignee removed for purchasing without leave, 516.
- leave given to assignees under restrictions, 516, 517.
- purchase by partner in trade of assignee disallowed, 517.
- solicitor of assignees allowed to bid only under special circumstances, 517.
- formerly resolution of creditors as to sale, not carried out without reference, 517. *quære* now, 517.
- sale of bankrupt's office of inheritance, 517.
- assignees to make title like other vendors, 517.
- waiver of title, 517, 518.
- covenant to produce title deeds, 518.
- assignees not bound to deliver the bargain and sale of commissioners formerly, though purchase comprised the whole of the bankrupt's estate, 518.
- bankrupt formerly not bound to join in assignees' conveyance, but is now, if required, 518.
- title to property sold not to be impeached unless proceedings to annul commenced and prosecuted, 518.
- section 131, Act of 1849, does not protect purchaser under superseded bankruptcy from assignees under a subsequent bankruptcy, 518.
- court of bankruptcy cannot compel purchaser to complete, 518.
- court may order assignees to convey, 519.
- purchaser may be bound by order of court if he submit, 519.
- bankrupt, refusing to deliver possession of leaseholds upon order, committed, 519.
- assignee refusing to concur in sale on reasonable doubt of its propriety, entitled to require reference, 519.
- if estate be sold subject to special covenants, official assignee not ordered to join without indemnity, 519, 520.
- form of lease by assignees, 520.
- proceeds of sale payable to official assignee formerly, 520.
- quære*, to creditors' assignee now, 520.
- surplus to bankrupt, his heir or executor, 520.
- heir to be recouped quoad real estate sold and not required for payment of debts, 520.
- proceeds of estate, till sold, receivable by assignees, 520.
- where bankrupt co-tenant with others, property how dealt with till sale, 520.
- co-tenant appointed receiver if willing to act, 521.
- otherwise bill to be filed for partition and receiver, 521.
- sale of perishable commodities before choice of assignees, 521.
- creditors' assignees in other cases to decide as to sale, 521.
- clause 40, Act of 1849, does not apply to mere fall in market, 521.
- creditors at meeting may appoint manager and settle his remuneration, 521.
- realization of debts due to bankrupt, 521.
- sale of goodwill and book debts, 521.
- notice of such sale, 521.
- power to mortgage or pledge bankrupt's property, 522.
- remarks on clause, sect. 133, Act of 1861.. 522, 523.
- court may direct money to be invested in exchequer bills, 523, 524.

ASSETS, DISCOVERY, &c. OF—*continued.*

securities may be purchased by accountant in bankruptcy under order of Lord Chancellor, 524.

Lord Chancellor may order securities purchased to be sold in certain cases, 525.
if insufficient to answer demands of creditors or bankrupt, deficiency to be made good by parliament, 525.

ASSIGNEES,

assignees, official, attached to district courts of bankruptcy, 816.

appointment of one, to act in each bankruptcy, 816.

where transfer made of proceedings under sect. 88, Act of 1861, court may remove official assignee and appoint new one, 816.

under Act of 1849, until assignees chosen by creditors, official deemed sole assignee of bankrupt's estate, 816. See *Assets, Discovery, &c., of.*

official assignee, how far bound to act, where no assets, 817.

if no creditors' assignee will accept office, bankruptcy annulled in certain cases, 817.

estate vested formerly in official and creditors' assignees jointly, 817.

under Act of 1861, vests in creditors' assignees only on appointment, 817.

but, by sect. 128, official assignee bound to collect debts not exceeding 10*l.*...817.
doubtful position of, as to such debts, 817.

have right of action for, *semble*, 818.

assets, joint, aliened by bankrupt after bankruptcy, recoverable by assignees, 184.

but such monies, when recovered, vest in creditors' assignees, 818.

for misconduct of creditors' assignee, court may remove him and appoint official assignee, &c. (sect. 139, Act of 1861), 818.

no provision in Act of 1861 to re-vest estate in such official assignee, 818.

a similar omission as to sect 182, *quære*, 819.

defect supplied by the Interpretation Clause, Act of 1861, *sub voce* "assignee," *quære*, 819.

powers in bankrupt exercisable for his own benefit, may be executed by assignees, 820.

except nomination to vacant benefice, 820.

joint action of official and creditors' assignees, required for execution of such powers, *quære*, 820.

assignees, being trustees for creditors, may not buy assets, 820.

not allowed for business done as accountants, 820.

creditors' assignee need not be a creditor, nor prove, if a creditor, 820.

assignee not having proved, need not come in under bankruptcy, 820.

neither the bankrupt, nor solicitor to bankruptcy, can be, 821.

court may order creditors' assignee to be removed and another appointed, 821:

power of court, subject to appeal, 821.

whether sect. 139, Act of 1849, as to choice of creditors' assignees, repealed or limited by Act of 1861, *quære*, 821.

court's power of rejection or removal of assignees under sect. 139 was held limited to first meeting or adjournment, 822.

under sect. 116 of the Act of 1861, choice lies with creditors of debts of any amount, subject to power of rejection in the court, 822.

But see *Addenda, Re Dobbs*, 15 L. T., N. S. 74.

creditors at any meeting duly called may remove assignee or manager, 822.

one fourth of, in value, may petition court for removal of assignee or manager, 822.

single creditor may petition for meeting to appoint new assignee, &c., in place of one dying, &c., 822.

creditors' assignee failing to observe directions of act may be removed by court and another chosen, &c., 823.

Acts of 1849 and 1861 not consistent as to persons entitled to choose assignees, 823. See *Re Dobbs, Addenda.*

power of rejection in court under each act, 823.

powers of removal under the two acts, inconsistent, 823.

must be exercised according to Act of 1861, *semble*, 823.

power of court to adjourn choice, *quære*, 823.

power of creditor, who has proved to vote in choice, 824. But see *Re Dobbs, Addenda.*

under separate adjudication joint creditors may prove and vote in choice, 824.

not so separate creditors, in case of bankrupt firm, 824.

creditor on voluntary bond may vote in choice, 824.

ASSIGNEES—*continued.*

- choice determined by majority of creditors voting, 824.
- corporation votes by attorney specially named, or by officer under a general power, 824.
- such officer may vote by proxy, 824.
- one partner may without power of attorney vote for self and partners, 824.
- any creditor may apply for rejection of assignee, 825.
- what are sufficient grounds for application, 825.
- where proofs wrongly excluded, court may reject assignee of nominal majority, 825.
- assignees, election of, set aside for fraud, 825.
 - chosen, not rejected, where creditors unprepared to prove, 825, 826.
 - nor if proofs excluded, unless fraudulently or so as to turn scale, 826.
 - creditors may vote for choice of, at any time before confirmation, 826.
- where no choice at first meeting and no adjournment, no subsequent choice possible, *quære*, 826.
- assignees, proxy to vote for, exhausted, where vote given for choice, which is avoided, 826.
- right to vote belongs to creditors in whose name proof stands, 826.
- but to those persons only who are entitled "of right" to prove, 826.
- secus*, as to others, unless order allowing right to prove, gives right to vote, 827.
- so of trustees proving against co-trustee, but cestui que trust, proving for the trust, may vote without leave, 827.
- a person, who could not be assignee, may vote, 827.
- bankruptcy superseded formerly, where no one accepted office of creditors' assignee, 827.
- official assignee now sufficient, 827.
- if one assignee, of several chosen, rejected, new choice as to all, 827.
- assignee, commissioner's discretion to reject, seldom interfered with by court of appeal, 828.
- sole surviving, should not retire, fill place of deceased filled up, 828, 829.
 - when fraud in choice of, court will remove, 828.
 - misconduct of, when ground for non-appointment, is also for removal, 829.
 - purchasing bankrupt's property, may be removed, 829.
 - removed should be, if necessary, to have accounts taken against them, 830.
 - poverty of, not alone ground for removal, 830.
 - residence of, out of jurisdiction formerly ground for removal, 830.
 - quære*, now under Act of 1861, sect. 124..830.
 - under Act of 1849, bankrupt might petition for removal of, 830, 831.
 - creditor, whose proof adjourned, could not petition for removal of, 831.
 - creditor now, under Act of 1861, cannot, unless proof admitted, 831.
- whether assignee can petition for his own or co-assignee's removal, *quære*, 831.
- assignee, inquiry as to misconduct of, directed, 831.
 - formerly removed on his own petition, he paying the costs, 831.
 - removed must allow use of his name by successor upon indemnity, 832.
 - removed, not for default, entitled to costs from fund in hand, 832.
 - election of new creditors' assignee, sect. 125, Act of 1861..832.
- "certificate of appointment" under seal of commissioner, 842.
- assignees, duty of, as to discovery, &c., of assets, 833.
 - powers of and of court, for those purposes, 833. See *Assets, Discovery, &c., of*.
 - specific powers and duties of, 833.
 - appointment of, to be registered, &c., if bankrupt's lands within register-district, 833.
 - should decline property of bankrupt if unprofitable, 833.
 - exercise powers exercisable by bankrupt for his own benefit, 833.
 - perform conditions for benefit of estate, 833.
 - should give effect to liens, &c., affecting the assets, 833.
- under Act of 1849, bankrupt's estate committed to official assignee, (but sect. 39 repealed), 833.
- how creditors' assignee manages estate, &c., 834.
 - and pays securities, &c., into Bank of England, 834.
 - exception as to debts under 10*l.* due to bankrupt, 834.
- assignee retaining over 50*l.* more than one week, penalty on, 834.
- practice under General Order, 19th October, 1852, as to payments into court by creditors' assignee, 834.
- modified by sect. 127 of Act of 1861..835.
- penalty under Act of 1849, sect. 265, for retainer by assignees of monies over 100*l.*, 835.

ASSIGNEES—*continued.*

- retainer must have been culpable, 835.
- creditors' assignee to furnish statements every three months to official assignee, sect. 129, Act of 1861..836.
- where no creditors' assignee, official assignee to furnish to registrar, &c., 837.
- omission to account, ground for removal of assignee. 837.
- official assignee to send each creditor printed copy of account, 837.
- creditors' assignee may be required to give security, 837.
- bankers, &c., to pay monies to official assignee, sect. 132, Act of 1849, *sed quare*, impliedly repealed, 837.
- discovery, powers of court for, 838.
- court may direct post-letters to be re-addressed to assignees, 838. See *Assets, Discovery, &c., of.*
- official assignee may require delivery on oath of bankrupt's books, &c., 838.
- court to give directions as to custody of books, &c., 838.
- arranging debtors, bankrupt, and creditors allowed to inspect, 838, 839.
- but creditor not allowed inspection to impeach adjudication, 839.
- nor bankrupt, before advertisement, unless on giving notice to dispute, 839.
- debtor refusing to be sworn under sect. 189, Act of 1861, committed, 839.
- copies of proceedings, grant of, 839.
- creditors named in bankrupt's statement, allowed copies without proving, 839.
- official and creditors' assignees audit accounts mutually, 840.
- official assignee at first meeting to give information as to estate, &c., 840.
- and to assist bankrupt in preparing statement to be filed with his own report, 840.
- assignees bound under Act of 1849 to act by direction of court and indemnified, 840.
- bound under Act of 1861 to act as directed by creditors' resolutions, *semble*, 840.
- in case of differences inter se, or with creditors, parties to apply to court in London, &c., sect. 136, Act of 1861..840.
- but court in its decision to regard wishes of majority in meeting, 841.
- bankrupt's statement of account to be examined and list of creditors to be made out by assignee, 841.
- creditors' assignee to submit statement of account to creditors at dividend meeting, 841.
- official assignee to check accounts and to be liable for error in dividend list, 841.
- office of creditors' assignee in payment of dividend ministerial only, *semble*, 841.
- duty of assignees to prosecute for breach of bankrupt acts, &c., 841.
- not bound to apply to court in every case of doubt, 841.
- inquiries directed by court, 842.
- but court will not decide questions of law for assignees in absence of opposing parties, 842.
- ex parte* order as to bankrupt's estate, &c., not binding on those not parties to it, 843.
- but assignees in certain cases entitled to indemnity out of assets, 843.
- contracts made by assignees not enforced by court, unless beneficial to creditors, 843.
- assignees may be sued on the contract, 843.
- court may direct them to be indemnified, *sed quare*, 843.
- assignees with leave of court may begin, prosecute, &c., actions and suits, sect. 153, Act of 1849..844.
- leave to sue not given unless success probable, 844.
- assignees to be repaid all reasonable expenses out of bankrupt's estate, 844.
- cases in which not allowed costs, 845.
- spending their own money for benefit of estate, repaid it, 845.
- arrangements between, and bankrupt, if beneficial, sanctioned, 845.
- with sanction of court, may appoint bankrupt to manage estate, carry on trade, &c., 846.
- but any creditor may object, *semble*, to the carrying on of the trade, and insist on sale of stock, 846.
- sed quare* effect of sect. 136, Act of 1861..846.
- formerly creditors could not prevent assignees from selling, 846.
- assignees, power of to disclaim onerous property, 846, 847.
- sed quare* effect of sect. 136, Act of 1861..847.
- sale not stopped by court unless offer of composition well secured, 847.

ASSIGNEES—*continued.*

assignees' conduct in selling, &c. assets, inquiries as to, 847.

may not purchase without leave, 515 et seq., 847. See *Sale of Bankrupt's Estate*.
creditors' assignees now bring actions for debts over 10l., 847.

and defend actions as to bankrupt's property, 847.

official assignee improperly refusing to join in suit may be made defendant and have to pay costs, 848.

if assignees refuse to bring action for recovery of assets, creditor may, indemnify them, 848.

where assignees without leave of court bring actions, &c., application should be made to court to restrain them, 849.

award binds bankrupt's estate, *semble*, though reference not sanctioned by court, 849.

reference, assignees not bound by, if bankruptcy happen before award, but they may submit, 849.

assignees not within sect. 11 of C. L. P. Act, 1854..849.

court will give assignees leave to proceed, where indemnity offered, 849, 850.

consent of the commissioner only required by sect. 153, Act of 1849..850.

agreement by assignees to refer may be made a rule of court, 850.

compromise of suits, advertisements calling meeting for, must specify them, 850.

bankrupt has no right to appear on application to compromise claims on behalf of estate, 850.

a supplemental suit by assignees, *semble*, not within sect. 153, Act of 1849..850, 851.

assignees holding property by title not derived from bankrupt, not sheltered by Court of Bankruptcy, 851.

may be liable for costs, although no assets, 851.

will not get costs in foreclosure suit, unless they disclaim before bill filed, 851.

ordered to pay, if satisfactory accounts of testator's assets tendered before administration suit brought, 851.

or where they fail in issue under Interpleader Act, 852.

if in suit begun with consent of creditors, costs given against assignees, they may retain by leave of commissioner, 852.

action may be brought against assignees for money had and received under void fiat, 852.

but assignee may in such case ask court for instructions and protection, 852.

no act done by assignee to be impeached, where adjudication defective as to requisites (sect. 41, Act of 1849), 853.

but this section does not extend to claims for damages, 854.

three months' limitation to actions for acts done under Act of 1849 (sect. 159, Act of 1849), 854.

assignees generally bound by ordinary rules of practice in actions, &c., 855.

liable on contracts entered into by them, 856.

petitioning creditor's costs to be provided out of estate (sect. 114, Act of 1849), 856.

this rule extended to debtor's petition, 856.

assignees liable for torts committed by them, though in dealing with assets, 856.

and for costs of defending property (supposed) of bankrupt, 856.

but will be allowed them out of assets, if any, if case proper to defend, 856.

liable upon contracts of bankrupt, when allowed to carry on trade, 856.

and for conduct of agent appointed by them, unless choice of sanctioned by creditors, 857.

secus, if agency a necessary one, &c., 857.

on bankruptcy of, who have retained assets, the debt may be proved against their estate, 857.

and certificate in such case will not free future effects, 857.

not liable for co-assignees, unless assets improperly left in power of defaulters, 857.

nor for rent of bankrupt's leaseholds unless accepted, 857.

court cannot indemnify for property sold, if adjudication annulled, 857, 858.

liable to third parties for acts not justified by their appointment under adjudication, 858.

defendant in action improperly brought by, may get injunction from Court of Bankruptcy, 858.

court will grant injunction when defendant has legal right of set-off, 858.

ASSIGNEES—*continued.*

- assignees cannot be sued at law or in equity for dividends declared, 859.
 application should be to Court of Bankruptcy, by petition, under sect. 190, Act of 1849.. 859.
 as to effect of non-repeal of sect. 190, on relative position of official and creditors' assignees under Act of 1861, *quære*, 859.
 right to petition for dividend does not extend to purchaser from creditor, *semble*, 859.
 assignees may file bill against representative of deceased co-assignee for dividends misapplied, 859.
 applications by petition for dividends can only be resisted by same defence as action formerly, 859, 860.
 where assignee directed to try validity of debt, found for plaintiff, the assignee disputing it liable for costs, &c., 860.
 creditor receiving dividends on his proof, not bound to refund, although paid in full by surety, 860.
sed quære as to rights of surety, 860.
 assignees have action for money had, &c. to use of bankrupt, 860.
 other cases, where assignees have particular rights of action, 860.
 where cause of action arises before act of bankruptcy, assignees sue as such, 861.
 if after, they sue in their own right, 861.
 trover not trespass, proper form of action where goods of bankrupt taken after act of bankruptcy, 861.
 cases in which demand should be made by assignees before action brought, 862.
 where bankrupt a partner, trover not correct form of action for goods of partnership sold, 862.
 tort, assignees should sue in, in cases where set-off might be pleaded, 862.
 abatement, none, of actions by death, &c. of assignee (sect. 157, Act of 1849), 862, 863.
 court upon suggestion substitutes new name, 863.
 but sect. 157 does not apply where assignee defendant, 863.
 substituted assignee, action may be continued by, though for penalty, &c., 863.
 where bankrupt entitled to property equitably only, assignee may, in action for, use name of legal owner, 863, 864.
 wife to be joined in suing for property, her chose in action, *dum sola*, 864.
 joint debt, assignees may join with solvent partners to recover, 864.
 where those refuse to join, assignees proceed under sect. 152, Act of 1849.. 864.
 assignees under separate fiats against persons having joint cause of action must all join and be distinctly described, 864.
 but may not in same action sue for joint and separate debts, 865.
 under adjudication against partners, may in same action declare for joint and separate debts, 865.
 official and creditors' assignees both formerly joined as defendants in actions, except in tort, 865.
 now creditors' assignees alone defendants, after their election, 865.
 but to compel execution of bankrupt's powers, official assignee still a necessary party, *semble*, 865.
 defendant has same defence against assignees where cause of action accrues before bankruptcy, as he would have had against trader, 865.
 but if after bankruptcy, he defends as if action brought by assignees in individual capacity, 865.
 assignment in fraud of creditors, assignee not bound by, 866.
 actions begun by bankrupt may be continued or abandoned, 866.
 assignees continuing, do so under name of bankrupt till judgment and must give security for costs, 866.
 where they elect to continue and give security, bankruptcy, &c. of plaintiff not pleadable in bar (15 & 16 Vict. c. 76, s. 142), 866.
 if they proceed and fail, bankrupt personally liable for costs, in spite of certificate, 866.
 but court will, generally, order costs out of estate, 866.
 court gives assignees a fortnight to elect to proceed with suit in equity begun by bankrupt, 867.
 assignees now made parties to pending suit by order merely (15 & 16 Vict. c. 86, s. 52), 867.
 defendant moves that assignees make themselves parties, or that suit be dismissed, 867.
 bankruptcy of defendant makes suit defective, 867.

ASSIGNEES—*continued*.

- after bankruptcy, assignees represent bankrupt as to interest in suit, 867, 868.
- bankrupt can only speak through them, 868.
- exception in case of foreclosure suit, *quære*, 868.
- sect. 233 of the Act of 1849 not applicable to suit by assignees to set aside fraudulent transfer, 868.
- applies to criminal prosecution against bankrupt (see *Reg. v. Levy*, 1103, overruling *R. v. Lyons*), 868, 1103.
- and to action, &c. in colonial court to annul, &c. adjudication, 869.
- no proof to be required in any action which bankrupt might have brought of act of bankruptcy, &c. unless notice to dispute given, 869.
- assignees to have costs of such notice, where, 869.
- sect. 234, *semble*, not applicable to feigned issue under Interpleader Act, 869.
- does apply, *semble*, where assignee sued in trover, claiming goods as belonging to bankrupt, 869, 870.
- and, *semble*, to actions by bankrupt against assignees, 870.
- but although notice not given (under sect. 234), evidence admissible of former commission still in force, *semble*, 870.
- infant need not give notice (under sect. 234), 870.
- petitioning creditor's debt taken as admitted, unless notice given under sect. 234 .. 871.
- notice need not be personal, 871.
- on part of defendant to be served before pleading, 871.
- of plaintiff before issue joined, 871.
- where notice given to dispute act of bankruptcy, not necessary to prove trading, 871.
- notice must specify part of proceedings disputed, 872.
- matters stated in, party may, by his pleading, preclude himself from disputing, 872.
- act of bankruptcy, petitioning creditor, in action against him by assignees, cannot dispute, 872.
- bankrupt not precluded from disputing by surrendering, &c., 873.
- nor creditor by proving, 873.
- treating assignees as such, *prima facie* evidence of their title, 873.
- notice to be given in suits in equity (sect. 235, Act of 1849) similar to that in actions at law (under sect. 234), 873.
- to be given to assignees within ten days after cause at issue, 874.
- denial of validity of bankruptcy in the answer to bill by assignees, not sufficient, 874, 875.
- where assignee's title in issue in actions by them, they must prove it, 875.
- trading, &c. put in issue by plea in action of trover that plaintiffs not assignees, 875.
- but defendant cannot under such plea rely on 2 & 3 Vict. c. 106, s. 133.. 875.
- evidence, what admissible, in actions, suits, &c., by and against assignees, 875, 876.
- ordinary evidence necessary to prove legal requisites, 876.
- petitioning creditor's debt, admissions of bankrupt, evidence of, 876.
- but not declarations, &c. of bankrupt after bankruptcy, 876.
- petitioning creditor's debt, substitution of one for another, how proved, 877.
- trading, how proved, 877.
- act of bankruptcy by lying in prison, how, 877.
- intent, as to evidence of, in act of bankruptcy, sect. 98 et seq., 878.
- bankrupt's estate, till choice of creditors' assignees, official assignee solely entitled to, 878.
- but his active interference should be limited to preserving estate, 878.
- property, if perishable, to be sold by official assignee, 879.
- book debts, sale of, when and by whom, 879.
- book debts, what, 879.
- custody of books, &c., court to make order as to custody of, when bankrupt's affairs wound up, 880.
- estate, assignees hold, subject to such rights, &c. as bankrupt, 880.
- solicitor, appointment of rests with creditors' assignees, or majority, 880.
- and they may remove him, but after acting, only with leave of court, and on payment of his costs, 880.
- court cannot compel assignees to sign order for payment, 880.
- but will order accountant in bankruptcy to pay without their signature, &c., 880.

ASSIGNEES—*continued*.

- solicitors of bankruptcy, court will only recognize as such, those appearing on proceedings, 881.
- no person entitled to withhold from assignees books of bankrupt or to claim lien thereon, 881.
- solicitor must surrender without stipulations, 882.
- solicitor, Lord Chancellor appoints, if bankrupt adjudicated under sect. 101, Act of 1861, and no assignee chosen at first meeting, 882.
- court may order assignees to change, if improper person chosen by them, 882.
- assignees, one of several cannot act separately, 883.
- nor can one give general authority to act for him, 883.
- receipt of money by one of, good for all, 883.
- majority of, govern minority in matters of joint discretion, 883.
- may not dispose of surplus assets, 883.
- may be required by court to produce papers, &c., 883.
- may not divide assets, except as dividend, 884.
- "unclaimed dividend account," unclaimed dividends and surplus assets to be carried to, 884.
- court has no power to order payment to assignees from unclaimed dividends or interest thereon, 886.
- but may order payment of, to creditors, 886.
- unclaimed surplus, assignees chargeable with interest on, in what case, 886, 887.
- creditors' assignees to send account of, to official assignee, and to pay monies into bank, 887.
- sole surviving creditors' assignee now can file bill against representatives of deceased, *semble*, 888.
- where no surviving creditors' assignee, *semble*, official assignee not entitled of right to sue for unclaimed dividends, 888.
- creditors entitled to sue in such case, *quære*, 888.
- Statute of Limitations, assignees cannot set up, as to unclaimed dividends, 889.
- order *ex parte*, for payment from assets to third party, not enforced by court, 889.
- trustee, property held by bankrupt as, assignees are entitled to notice of proceedings affecting, 889.
- discharge, order of, creditors' assignee entitled to, after affairs of bankrupt wound up, 889.
- salary of official assignee includes all remuneration for duties done since 11th October, 1861..889.
- duties and responsibilities of, in respect of audit and dividend. See *Audit and Dividend*, 725 et seq.

ATTORNEYS. See *Solicitors*.

AUDIT,

- practice as to, 725 et seq.
- now no public sitting for, 725.
- of official assignee's accounts by creditors' assignee, 725.
- creditors' assignee to render accounts quarterly to official assignee, 725.
- official and creditors' assignees audit accounts mutually, 840.
- where no creditors' assignee, official assignee to render accounts, 726.
- accounts to be printed and circulated, 726.
- importance of time as to rendering, 726.
- dismissal of assignee for delay in rendering, 726.
- audit passed on oath of assignees in this country, 726.
- audit-meeting, assignees compelled to attend by attachment, 726.
- commissioner might, after audit, inquire as to monies received before, 726.
- on appointment of creditors' assignee, official assignee to pay costs and charge them in account, 726, 727.
- See further, *Costs*.
- official assignee's duty to call for, 727.

AWARD,

- binds bankrupt's estate, *semble*, though reference not sanctioned by court, 849.
- if bankruptcy happens before, assignees not bound by reference, but they may submit, 849.
- assignees not within Common Law Procedure Act, 1864..849.
- See *Assignees*, 849 et seq.

BANK OF ENGLAND. See *Accountant in Bankruptcy—Official Assignee.*

to present negotiable instruments belonging to bankrupt's estate for payment, 34.
 and cause same to be protested, &c., 34.
 business of, may be done through branch banks or banks appointed by, 35.
 forms relating to, in country printed in red ink, 35.

BANKRUPT,

all debtors may now be, 75.
 non-traders, however, only under conditions, 75.
 who may be, as traders. See *Traders.*
 aliens and denizens might be, 91.
 Irish traders may not be made, here, 92.
 married women, *quære*, 92, 93.
 infants, *quære*, 93.
 lunatics, *quære*, 93.
 executors and trustees, *quære*, 93.
 peers, members of parliament, servants of ambassadors, clergymen and public officers, 93, 94.
 uncertificated bankrupts may be, *quære*, 94.
 where bankruptcy pending is foreign, *quære*, 94.
 where bankruptcy occurs here first and bankrupt uncertificated thereunder, 95.
 outlaw may be, *quære*, 95.
 insolvent, *quære*, 95.
 distinction in this respect between insolvency and bankruptcy, 95.

BANKRUPT, THE,

duty of, to surrender, 901.
 can do so immediately after adjudication, 901.
 he ought to do so before first meeting, and render assistance, 901.
 not surrendering in due time, guilty of misdemeanor, 901.
 court may enlarge time by order, 901.
 commissioner may allow surrender after time limited, 902.
 petition for this purpose to be either by bankrupt or assignees, 902.
 on what grounds prayer granted, 902.
 refused, where, 902.
 leave given, where for benefit of creditors, although bankrupt had absconded, 902.
 or where delay of proceedings not *malâ fide*, 902.
 on what terms in such cases, 903.
 bankrupt obtaining leave to surrender gets costs of petition, when, 903.
 order permissive, not mandatory, but does not protect against prosecution for non-surrender, 904.
 annul, bankrupt cannot petition to, without surrender, 904, 905.
 surrender, detaining creditor cannot object to permission for, 905.
 bankrupt in prison may, by order of Court of Bankruptcy, be brought before it (sect. 112, Act of 1849), 905.
 costs, how payable in such cases, 905.
 bankrupt taken on warrant within time for surrender has, on submitting, &c., same benefits as on voluntary surrender, 905.
 non-surrender, proclamation in case of, 905.
 protection under sect. 112, Act of 1849..905.
 not available against subsequent creditors, 906.
 creditor arrested, discharged on production of protection order, 906.
 penalty, recoverable for infraction of order, 906.
 common law remedy for malicious arrest also enforceable, 906.
 protection under sect. 112 available for all arrests under the bankruptcy for debts proveable or not, 906.
 extends, *semble*, to arrest on warrant for non-payment of poor rates, 907.
 to arrest by bail, *semble*, 907.
 to person in custody at time of surrendering, 909.
 except in last case, where debt contracted by fraud, 909.
 protection under sect. 112 does not extend to re-taking of prisoner by marshal of Queen's Bench, 907.
 nor to bankrupt voluntarily surrendering in discharge of bail, 908.
 person in custody under *cap. ad resp.* discharged under sect. 162, Act of 1861..907.
 discharge under sect. 162, releases from custody for costs of action brought after bankruptcy for debt due before, 908.
 bankrupt may claim immediate discharge under sect. 112, although adjudication open to objection, 908.

BANKRUPT, THE—*continued*.

- protected from arrest, is, from all detainers lodged against him, 909.
- where bankrupt discharged from prison under sect. 112, no rights of creditors to be affected, except right to detain in prison, 909, 910.
- grant of protection to be in court's discretion, except as specially excepted in sect. 112..910.
- discretion of commissioner limited under sect. 112 by excepted offences, only if they appear on the judgment, &c., 913.
- discretion exists where bankrupt in custody for assault committed by his wife, 914.
- but appeal allowed, 910.
- cases in which court will withhold protection, 910 et seq.
- proper time for discharge under protection, after choice of assignees, 912.
- but court will in certain cases release before choice, upon security being given, 912.
- release refused under Act of 1861, before bankruptcy advertised, where bankrupt petitioner, 912.
- court's discretion to grant, not exercised against creditors' rights, 913.
- bankrupt's petition for adjudication showing no assets, dismissed as in fraud of statute (*sed quære*), 913.
- release, what are not grounds for refusing, 913.
- discharge must be unconditional, where bankrupt not in custody, 914.
- order for costs not to be made condition for, in that case, 914.
- secus*, if bankrupt not in custody, 914.
- notice of application for release to be served on detaining creditor and his solicitor, 915.
- release of bankrupt member of company, official manager and creditors' representative to be heard against, 915.
- discharge, order for, under sect. 159, Act of 1861, not rescinded except under sect. 168..915.
- bankrupt, under Act of 1861, privileged from arrest "while coming to surrender," 915.
- "coming to surrender" construed liberally, 915.
- if last examination adjourned *sine die*, bankrupt free for period indorsed by commissioner on summons, 916.
- on expiration of time for surrender, bankrupt during enlarged time not privileged from arrest except *eundo et redeundo*, 916.
- commitment does not operate as adjournment *sine die*, with protection, 916.
- where last examination adjourned *sine die* no protection, unless indorsed on summons, 917.
- protection, *interim* order for, valid, though bankrupt withdraws application for certificate, 917.
- office copy of judgment, showing cause of imprisonment to be produced on application for discharge, 917.
- protection, grant of, even where certificate suspended, 917.
- where certificate suspended, no protection against debts, subsequent to bankruptcy, 917.
- common law, bankrupt has by, like privilege as witnesses, &c., 918.
- discharge, practice (formerly) to make order for, upon arresting creditor, then upon officer, 918.
- reasons for this course considered, 918 et seq.
- jurisdiction, *quære*, whether court now has, to order discharge of bankrupt by detaining or arresting creditor, 919.
- or to discharge from process of superior court (see sect. 198, Act of 1861), 920.
- protection of bankrupt is only from personal process, 923.
- goods of, arranging, liable to execution (*semble*) (but see sect. 198, Act of 1861), 923.
- protection does not prevent or stay actions against bankrupt, 923.
- judgment creditor arresting bankrupt should discharge him and prove for debt, 923.
- bankrupt should give information as to assets, &c., 924. See *Assets, Discovery, &c., of*.
- must attend commissioners, 924.
- and answer them as to dealings, &c., 495 et seq., 924.
- discover books and papers, 924.
- after surrender must attend assignees and aid in making out accounts of his estate, 924.

BANKRUPT, THE—*continued.*

bankrupts should give information as to assets, &c.—*continued.*

and do all acts for getting in, &c. estate, 924.

must discover assets, &c. before commissioners, 924, 925.

and deliver up those in his possession, &c., 925.

and join assignees in conveying his estate, 511, 925.

may show cause against adjudication before advertisement and present petition of appeal, 776, 798, 799, 809, 925.

after surrender he may inspect his books, &c., 925.

bound to put assignees in possession of all his property, 925.

and to file accounts ten days before last examination on oath, 925.

For allowance to bankrupt. See Allowance.

court, after choice of assignees, appoints day for last examination, 928.

and may enlarge time for, or adjourn, 928.

bankrupt making full disclosure entitled to have discharge considered, 928.

commissioners' discretion as to accounts seldom interfered with by Court of Appeal, 928.

surplus produce of realty belongs to heir at law, 928.

but allowance will be made under sect. 195, Act of 1849, to executor or administrator, 928.

surplus produce of estate (not realty) after payment of 20s. to be for bankrupt, his executors, administrators or assigns, 932, 933.

but where dividend amounts to 20s., creditors entitled to interest on debts, 933.

accounts, bankrupt entitled to copies of, to ascertain his interest in estate, 933.

certificated bankrupt showing probable surplus may call on assignees for account, 933.

and may petition for removal of assignee with interest hostile to creditors, 933.

but bankrupt cannot file bill against assignees for account in equity, without charging specific acts of fraud, 934.

Court of Bankruptcy cannot compel executors of deceased assignees to account to, 934.

uncertificated, may bring action for labour done after petition for adjudication, 934. or for trust property, 934.

may acquire property and sue for it (*Cumming v. Roebuck, &c.*), 934.

cannot sue where rights of action accrued before bankruptcy, 935.

may in some cases sue in his own name where right of action vested in assignees (*Guinness v. Carroll*), 935.

suing for assignees must give security for costs, 936.

may move court to set aside execution on his goods levied before bankruptcy, 936.

as to principle of decision in such cases, *quære*, 936.

uncertificated, may bring action for personal injury sustained before bankruptcy, 937.

may try validity of adjudication by action for goods seized under it, 937.

secus, if he acquiesces in the bankruptcy, 937.

what is acquiescence, 937.

discharged under adjudication cannot contest its validity, 937.

may petition in Court of Bankruptcy in all matters in which he has a direct interest, 795 et seq., 809 et seq., 902, 930, 931, 933, 938.

before he can be heard on question depending on invalidity of adjudication, must have taken steps to set it aside, 938.

but might file bill to set aside sale of his estate pending proceedings to annul, 938.

may demur or plead bankruptcy, if made defendant to suit for property belonging to him at time of bankruptcy, 938.

but where plaintiff in equity, his bankruptcy after hearing will not prevent decree, 938, 939.

plaintiff becoming bankrupt before decree not liable for costs, 939.

may, after adjudication, join in reference, and costs may be enforced against him, 939.

award not binding on assignees unless adopted, 939.

bankruptcy revokes all revocable powers and authorities, 939.

bankrupt, agreement of, to confirm sales, understood of sales properly made, 940.

defendant in action becoming, after verdict, but before judgment, plaintiff not entitled to prove for costs, 940.

bankruptcy of executor, administrator or trustee, does not affect his rights as such, 940.

BANKRUPT, THE—continued.

bankruptcy of executors, &c.—*continued.*

but may be ground for removal, 363, 940.

but not unless trust estate endangered, 940.

bankrupt, costs adjudged to, as trustee, belong to him personally, 941.

may prove against his own estate, as sole executor, &c., 376, 377, 539, 941.

bankruptcy no answer to suit, &c. against, as trustee, &c., 941.

bankruptcy, committee of lunatic not removable merely for, 941.

does not prevent practice of profession of attorney, 941.

nor revoke a will, 941.

is no abatement of a suit, 867, 941.

does not revoke a submission to arbitration, 941.

does not disqualify from being elected councillor under Municipal Corporation Act, 941.

but occurring after election, vacates office, 941.

members of parliament not to sit or vote, if declared bankrupt, unless debts paid, &c., 941, 942.

if debts not paid in two months, new writ to issue, 942.

bankrupt, after discharge, not liable for debts proveable under bankruptcy, 942.

fi. fa. upon after-acquired goods of, set aside on motion, 942.

defendant becoming bankrupt, may plead discharge puis darrein continuance, 942.

discharge under sect. 164, Act of 1861, frees from claims on promise made after adjudication, 942.

protection now less wide than under sect. 204, Act of 1849..943.

policy of later enactment questionable, 943.

neither statute (of 1849 or 1861) avoids such promises ab initio, 943.

a bond is within these sections, 943.

bankrupt, liability of, on contracts in respect of property which assignee has refused to accept, 943. See *Lands subject to Rents, &c.*, 287 et seq.

case of onerous leases provided for by sect. 145, Act of 1849..943.

where railway shares not accepted by assignees, bankrupt held liable for future calls, 943. See *Proof of Debt*.

apprentices discharged by master's bankruptcy, 593, 944.

although fiat, &c. afterwards annulled, 944.

clerk bound to attorney, &c. who becoming bankrupt, to be discharged or assigned to other person, 944.

bankrupt, plea by, to action, barred by discharge (sect. 161, Act of 1861), 944.

plea of bankruptcy under sect. 161 to be pleaded only where action begun after bankruptcy, 944, 945.

plea must be special if bankruptcy and certificate both after action, 945.

bankruptcy of sole defendant no good plea in bar, where, 945.

bankrupt entitled to discharge in any stage of proceedings, 945.

certificate, where not granted till plea pleaded, must be pleaded specially, puis darrein continuance, 945.

court will not discharge bankrupt released on bail, 945.

where certificate cannot be pleaded puis darrein continuance, court will yet stay proceedings, 946.

assets, bankrupt may buy (after discharge or certificate) from assignees, 946.

criminal proceedings against bankrupt. See *Crimes and Penalties*.

death of bankrupt before adjudication suspends petition for, 946.

after adjudication court may proceed as in his lifetime, 946.

joint fiat amended by omitting name of bankrupt dying before adjudication, 946.

whether bankrupt dies before or after declaration of sufficient dividend, right to allowance vests in his personal representative, 947.

death of bankrupt, pending appeal from order annulling adjudication, ends jurisdiction of court, 947.

BANKRUPTCY,

act of. See *Act of Bankruptcy*.

is no abatement of a suit, 867, 941.

And see further as to effect of bankruptcy, 940 et seq.

BANKRUPTCY FUND ACCOUNT,

nature of, 37.

subject to general orders of lord chancellor, 37.

BENEFICE, CLERICAL,

sequestration of, 514.

right to nominate to, does not pass to assignees, 820.

BILL OF SALE, 425, &c. See *Unregistered Bills of Sale*.

BILLS OF EXCHANGE,

short, lodged with banker, do not pass to his assignees, 371.
unless treated as cash by the parties, 371. See *Agent*, 371 et seq.

BILLS OF EXCHANGE AND PROMISSORY NOTES, PROOF FOR,

bills, &c. on which bankrupt primarily liable, proof for, where current at date of bankruptcy, 601.

law of proof for, in other respects, same as general law, 601.

notice of dishonour, 601.

want of stamp, 601.

acceptance in blank, 601.

indorsed by bankrupt after bankruptcy, 602.

notice of dishonour, to whom to be given, 602.

rules as to notice generally, 602.

no proof for against person not party to, though collaterally bound to pay, 603.

but there may be for consideration for, and upon contract to pay, 603.

bad in form, &c. no proof for, but may be for consideration of bad bill, 603.

delivered, but not indorsed by bankrupt, 603.

dishonoured, debt for which given, revives, 603.

transferee of, indorsed in blank, proof by, 604.

proof for, where time given without privity of bankrupt drawer, 604.

proof for, by *bonâ fide* holder, where bankrupt's acceptance obtained by fraud, 604.

no proof for, by person for whose accommodation acceptance given, 605.

bill of exchange lost, proof for, 605.

proof for, limited by circumstances under which given, 605.

no proof for, by drawer or indorser until paid, except as contingent debt, &c., 606. See *Contingent Debts and Contingent Liabilities*.

proof for, by holder against indorser becoming bankrupt, while bill current, 606.

claim formerly by indorser for accommodation of surety, 607.

paid after bankruptcy of acceptor by drawer or indorser, proof by as surety, 607. See *Proof by Surety*.

proof for, by any party to, bar to action on bill against bankrupt, 607.

bill of exchange, drawer or indorser of, may require holder to prove or lend his name, 607.

proof by holder for value of accommodation bill, 607, 608.

given for accommodation, dividends upon, how applicable, 608.

proof for full amount of, allowed against each party to bill, 608.

where part paid before proof, residue only provable, 608.

where given as guaranty, and part of guaranteed debt paid by principal debtor, 608.

where bill held as security, one proof only on debt and bill, 609.

proof for, by *bonâ fide* indorser for value, 609, 610.

bill of exchange, dividend on, received after proof from any party to, no ground to reduce proof, 610.

not negotiable as between parties to it, provable by holder, where, 610.

given as security, provable against estate of bankrupt acceptor till original debt paid in full, 610, 611.

but amount paid on in such case allowed in reduction of secured debt, 611.

where consideration for, fails, acceptor may repudiate, 611.

interest on, allowed under 6 Geo. 4, c. 16..611.

costs of protest, commission, re-exchange, &c., incurred before petition, provable, 611.

secus, if after, 611.

foreign, amount provable on, how estimated, 611.

BONDS, PROOF FOR,

bond to pay money at time certain, 598.

on demand, and no demand made before bankruptcy, 598.

quære as to law now under sects. 177 and 178, Act of 1849..598.

where no demand, but interest, not provided for by condition, paid, 598.

payment of interest as evidence of demand, 598.

bond to pay money on death of obligor and interest within certain time after demand, and no demand before bankruptcy, 599.

quære, now provable, 599.

to pay money on death of obligor and interest during life provable, if bond absolute by failure to pay interest, 599.

BONDS, PROOF FOR—*continued.*

- bond, debt on, not penalty of, provable, 599.
- voluntary, provable, but dividend on, postponed till other debts paid in full, 599.
- voluntary, by separate obligor, joint debts preferred to, against separate assets, 599.
- proof for interest on voluntary bond, 599.
- voluntary, new security for, ranks with ordinary debts, *semble*, 599, 600.
- secus*, where new security given in contemplation of bankruptcy, 600.
- rules of law and equity as to proof on, 600.
- proof on, cannot be for more than penalty, 601.
- joint, proof for, allowed against each obligor, 601.
- mistake in condition of, rectified, 601.

BOOKS OF ACCOUNT,

- bankrupt to deliver up, to official assignee, 434, 838 et seq. See *Assets, Discovery, &c., of*.

BOTTOMRY BOND, PROOF FOR, 572. See *Policy of Assurance.***BREACH OF TRUST,**

- proof for, 527, 531, 532. See *Proof of Debt—Settlement.*
- by partner, participation of firm in, 667 et seq. See *Adjudication, Joint and Separate, Proof under.*

BUILDINGS,

- in Basinghall-street and Portugal-street vested in Board of Works, to be appropriated as Lord Chancellor shall direct, 73.
- balance due to treasury for monies paid out of unclaimed dividend account, 74.
- coal, candles, taxes, &c., for, payable out of chief registrar's account, 74.
- in country for district courts vested in commissioners respectively, 74.

CALLS ON SHARES, &c.,

- petitioning creditor's debt, 193. See *Petitioning Creditor's Debt.*
- proof for, 532. See *Proof of Debt.*

CERTIFICATE, B a,

- under Act of 1849, sect. 257. See *Consequences of Proof*, 702.

CERTIFICATE,

- adjudication not annulled after grant of, except for fraud, &c., 802.

CERTIFICATE OF REGISTRATION,

- not conclusive of validity of deed under sect. 192, Act of 1861..1053. See *Arrangements with Creditors.*

CHANCELLOR, LORD,

- his ancient jurisdiction in bankruptcy, 6.
- might direct fiat to Court of Bankruptcy, 7.
- might appoint one of the vice-chancellors to act in appeals in bankruptcy, 8.
- might order vacancies in offices of certain commissioners to be filled, 9.
- may attach commissioners, registrars, &c., to districts, 9.
- may declare that vacancies shall not be filled, 9.
- may provide for exercise by county courts of jurisdiction in bankruptcy, on transfer of commissioner's jurisdiction to such court, 9, 10.
- judge of new county court to be appointed by, 10.
- may direct one commissioner to act for another in certain cases, 11.
- may settle remuneration, travelling expenses, &c., of person acting for commissioner, 11, 12.
- may appoint substitute for commissioner, 12.
- to regulate sittings of court in vacation, 15.
- may remove officers, &c., 18.
- may fill vacancies among registrars, 18.
- may direct vacancies in offices not to be filled, 18, 30, 41.
- may fill vacancies among official assignees, 29.
- and dismiss them for good cause, 29.
- may make general orders as to dealing with accounts, 37.
- may dismiss taxing master for cause, 40.
- may fill vacancy in taxing master's office, 40.
- may appoint deputy for taxing master during illness, &c., 41.
- vacancy in office of messenger or usher not to be filled without leave of, 43.

CHANCELLOR, LORD —*continued.*

- may dismiss messenger for cause, 43.
- may fill vacancies in office of messenger, 43.
- may forbid such vacancy to be filled, 43.
- with assistance of two commissioners may make general orders, 52.
- former power, 52.
- is to lay orders before parliament, 53.
- may sanction general orders for county courts made by judges appointed by him, 57.
- may authorize the registrar of county court to exercise powers of registrar in bankruptcy, 57.
 - order of, General Order, 23rd October, 1861..57.
- ancient appellate jurisdiction of, in bankruptcy, 60.
- statutory appeal to, by 1 & 2 Will. 4, c. 56..60.
 - by Act of 1849..60, 61.
- no appeal from court of appeal to, 61, 62.
- jurisdiction in appeal of, under 14 & 15 Vict. c. 83..62.
- is to have return made to him of business pending in Insolvent Court, and make order for its disposal, 66.
- may direct what shall be done with buildings in Basinghall-street and Portugal-street, 73.
- might direct repayment out of unclaimed dividend account of money due to treasury for land and buildings, 74.
- might approve of expenses for surveys, plans, &c., 74.

CHIEF REGISTRAR. See *Chief Registrar's Account.*

- to provide seals, 17.
- appointed in lieu of Lord Chancellor's Secretary of Bankrupts, 20.
- acts done during vacancy in office of, valid, 20.
- office of, open daily, 20, 21.
- registrar may act for, during illness, &c., 21.
- country registrars to transmit to, copies of certain entries, 21.
 - also monthly returns, 21.
- petitions, affidavits, &c. to be filed in office of, in London, 21.
- officers to make annual returns to, 25, 32, 39, 48.
- to frame general return therefrom for parliament, 25.
- returns to be kept by, open to inspection, 25.
- to direct petitions to commissioners in London in rotation, 26.
- in his office declarations of insolvency in London filed, 26.
- to assign gaolers' returns in rotation to registrars, 26.
- office of, is place where deeds under 192nd section shall be registered, 26.
- to take security from messenger, 27.
- receipt for premium to be shown to, yearly, 27.
- messenger to account to, quarterly, and official assignee half-yearly, for fees, 27, 44.
- to keep roll of attornies, &c., 27, 49.
- on vacancy to do duties of accountant in bankruptcy, 27.
- records transferred to office of, 51.

CHIEF REGISTRAR'S ACCOUNT,

- charged with salaries, retiring annuities, &c., 15, 16, 38.
- balance of messengers' and official assignees' fees payable to, 27, 44.
- consolidation of accounts to form, 36, 37.
- subject to general orders of Lord Chancellor, 37.
- and to special order in certain cases, 38.
- compensations charged on, 38.
- sums and fees received by taxing master to be paid to, 42.
- monies voted by parliament for Insolvent Court to be paid in to, 67.
- expenses of buildings, coal, candles, taxes, &c., payable out of, 74.
- monies forfeited under Act of 1861 to be paid to, 1103.

CHOICE OF ASSIGNEES,

- with whom it rests, 822. And see *Addenda, Re Dobbs.*

CHOSSES IN ACTION,

- of bankrupt vest at law in assignees, 300.
- right to damages on contracts, or arising out of property, 301.
- action for wrong merely personal does not pass, 302.
- quære*, as to *trespass quare clausum fregit*, 302, 303.
- benefit of contract involving future personal service of bankrupt, *semble*, does not pass, 303, 304.

CHOSSES IN ACTION—*continued*.

- action for wages already due does pass, 304.
- profits of trade carried on by leave of assignees pass, though partially earned by personal labour of bankrupt after bankruptcy, 304.
- bankrupt may have right of action against his assignees for wages of labour done by him, 304, 305.
- right of action for wrong done to property passes, 305.
- real actions and rights of entry pass, 305.
- rights of action on implied assumpsit pass, 305.
- right to property, though given as compensation for personal wrong, if once it has become right of property, passes, 305.
- right must have vested before certificate or discharge, though action not then yet maintainable, 305.
- negotiable securities belonging to bankrupt pass without indorsement, 306.
 - except accommodation bills in the hands of persons for whose accommodation they were accepted, 306.
- equitable choses in action pass, 306.
- contingent legacy will pass, though contingency does not happen till after order of discharge, 307.
- Lee v. Olding*, contra, 307. See *Re Vizard's Trusts*, 1027, 1060.
- Ex parte Cobb*, 307, 308.
- Re Jackson's Trust*, distinguished, 308.
- policy on bankrupt's own life, 308.
- condition, which would avoid policy against bankrupt, will avoid it against his assignees, 308.
- assignees have no right of action for money paid to another in lieu of bankrupt, where the bankrupt would have no right of action, 309.
- insurer of goods, pledged by bankrupt after bankruptcy, having recovered, though having no insurable interest, held not liable to assignees, whose the goods were, 309, 310.
- quære*, as to right in equity in such cases, 310.
- assignees entitled to benefit of contract made with bankrupt before his discharge, whenever fulfilled, 310, 311.
- they may either complete and sue on special contract, or sue on *quantum meruit*, if *quantum meruit* would lie, 311.
- right to specific performance of contract for purchase of land passes, 312.
- vendor of estate in lands may compel assignees to elect whether they will abide by or decline agreement for sale, 312.
- court of bankruptcy cannot compel assignees to perform, 312.
- quære*, where consideration for contract good, but not valuable, 312.
- choses in action passing, pass affected with the equities affecting them in the hands of the bankrupt, 313.
- instances, contract for interest, 313.
 - rights of set-off, 313, 314.
 - rights of lien, 314, 315.
 - rights of requiring performance of cross covenant, if ripe for performance, 315.
 - right of setting up Act of Limitations, 316.
 - when time begins to run against assignees, *quære*, 316.
- admissions after bankruptcy, 316.
- rights of defence of bankrupt against claims pass to assignees, 316.
- rights of action in foreign dominions of Crown pass at law to assignees, 316.

CLAIMS. See *Practice on Proof of Debt*, 722 et seq.

COMMENCEMENT OF ACT OF 1861,

Act of 1861 commenced from 11th October, 1861..1109.

COMMISSIONER,

- registrar may act for, 11.
- remuneration of person acting for, 11, 12.
- Lord Chancellor may appoint substitute for, 12.
- effect of death of, on appointment of substitute, 12.
- constitutes court, 14.
- may sit in chambers, 15.
- Lord Chancellor to regulate attendance of, in vacation, 15.
- salaries and retiring allowances of, 15, 16.
- appeal from registrar, 19.

COMMISSIONER—continued.

may make order for payment, &c. of monies to credit of accountant in a bankruptcy, 33.
 may order delivery of negotiable securities out of Bank of England to official assignee, 35.

COMMISSIONERS,

instituted for London, 6.
 for the country, 7.
 attorneys or solicitors could not be, 6.
 not to practise as barristers, 6.
 not to sit in House of Commons, 6.
 vacancy among, how supplied, 7, 8.
 not to be filled up in certain cases, 8, 9.
 to hold office during good behaviour, 8.
 continued by Act of 1861..8.
 original number of, 8, 9.
 Lord Chancellor may attach to district, 9.
 Queen may transfer jurisdiction of, to county courts, 9.
 and may appoint new county courts with jurisdiction of, 9.
 Lord Chancellor may direct one to act for another, 11.

COMMITTAL TO PRISON,

of bankrupt for refusing to deliver books, &c., 484. See *Assets, Discovery, &c. of*.
 alternative course with that of adjourning *sine die*, 490. See *Assets, &c.*
 of bankrupt for contumacy in not furnishing accounts, 491, *ib.*
 by warrant for refusing to be sworn, &c., 495, *ib.*
 commissioner should not commit unless answers wilfully evasive, 500, *ib.*
 no ground for, that witness is contradicted by others, 501, *ib.*
 witness not heard on application for warrant of, against him, 501.
 form of warrant of, of bankrupt, 501.
 copy of examination to be delivered to person committed, 502.
quære, whether form in Schedule C. imperative, 502.
 to whom warrant should be directed, 502.
 instances of warrants litigated under old law, 503.
 no part of examination need be set out in warrant, 504.
 no objection to warrant that date was day of examination, though not drawn up till some days later, 504.
quære, whether commissioner can discharge prisoner until he submits, 504.
 formerly warrant exhausted by submission of prisoner, 504.
 court could not make payment of costs condition of discharge, 504.
 might make specific order for payment of costs, and commit in default, 504.
semble, warrant, Schedule C., never exhausted until order for prisoner's discharge, 504.
 penalty on gaoler suffering prisoner to escape, 505.
 how prisoner should submit, 505.
quære, whether he must pay costs of sitting to receive his submission, 505.
 new warrant formerly needed for recommitment, 505.
 proper course as to costs of submission, 505.
mandamus will not lie to compel commissioner to order prisoner to be brought up to submit, 505.
 only mode of obtaining discharge, if properly committed, was submission, 506.
 warrant cannot be questioned till prisoner is in custody under it, 506.
 proper mode by appeal, or by habeas corpus, 506.
 how brought on or obtained, 506.
 erroneous return of warrant will not suffice to discharge prisoner, if warrant itself correct, 506.
 if question be improper it is no waiver of its impropriety that the objection was not taken before commissioner, 506.
 discharge from, 507.
 omission in sect. 261, Act of 1849..507.
 affidavits may prove facts not on warrant, 507.
 no action against commissioner for, 507.
 bankrupt refusing to deliver possession of leaseholds upon order, committed, 519.

COMPOSITION OF DEBT,

debts compounded, when provable notwithstanding composition, 530, 531.
 invalidated by concealed arrangement for preference of creditor, 182, 183, 206, 439.

COMPOSITION,

- provisions as to, after bankruptcy, repealed by Act of 1861..794.
- bankrupt now to proceed under sect. 185 et seq., Act of 1861..794.
- composition, agreement to accept, under sect. 230, Act of 1849, no release of bankrupt without tender, 994.
- law similar under Act of 1861..994.
- composition, unless offer of well secured, sale of bankrupt's property not stopped by court, 847.

COMPROMISE OF SUITS,

- advertisement calling meeting for, must specify them, 850.

CONCERTED ACT OF BANKRUPTCY,

- formerly could not be ground of adjudication, 97.
- otherwise now, 97.

CONDITIONAL ESTATES,

- conditions, affecting property in hands of bankrupt, affect it in those of assignees, 272.
- assignees cannot, *e. g.* cut ornamental timber, 272.
- conditions precedent or subsequent, defeating bankrupt's estate may defeat assignees' estate, 272.
- name and arms clause, 273. See *Mortgages—Judgments.*
- estate defeasible by condition on bankruptcy of grantee, 277.
- difficulties, 277.
- condition against assigning generally, 277.
- where the condition is to secure in favour of grantor personal occupation of grantee, 277, 278.
- where only to secure against inconvenience of assignment, 278.
- where new interest reserved to bankrupt, 278, 282 et seq.
- cases illustrating first difficulty, 278, 279.
- condition against assigning generally applies only to assignment by act of the party, 279.
- cases illustrating above rule, 279 et seq.
- if personal occupation be not reserved for grantor's benefit, and if no gift over on defeasance, then interest, unless it actually determines, passes to assignees, 281.
- if interest of bankrupt be in terms defeated by his bankruptcy, and no new interest be given him, nothing vests in assignees, 282.
- if defeasance be not express, or if new interest be limited, as much as is in bankrupt passes to his assignees, 282.
- execution of declaration of insolvency is not an assignment within a general defeasance on alienation, 284.
- adjudication on bankrupt's own petition, *semble*, is, 284.
- petition to insolvent court, and assignment thereon, is, 284.
- execution of deed of assignment for benefit of creditors under 192nd sect. of Act of 1861, is, 284.
- condition, affecting to defeat an absolute continuing interest, where no gift over, is void, 284.
- semble* otherwise, if the estate may determine by the condition, 284.
- instance of the former rule, 285.
- trust for accumulation on bankruptcy valid, 285.
- settlement of a man's property on himself defeasible on bankruptcy, defeasance is void except for a pecuniary consideration, 286.
- marriage not consideration except to amount of wife's fortune, 286.
- similar settlement made by a third person is valid, subject to the rules before given, 287. See *Settlements.*

CONDITIONS,

- of arrangements under sect. 192, Act of 1861..1002. See *Arrangements with Creditors.*
- annexed to discharge, how enforced, 959 et seq. See *Discharge, Order of.*
- as to act of bankruptcy by non-trader, 136. See *Act of Bankruptcy.*

CONSEQUENCES OF PROOF,

- right to vote for assignees, 689. But see *Addenda, Re Dobbs.*
- to share in dividend, 689.
- to be heard in proceedings where creditors interested, 689.
- to have interest on debt, in case of a surplus, 689, 690.
- rights not lost by release of debt, after proof, to bankrupt, 689.
- surety's right to interest, paying debt after proof by creditor, 690.

CONSEQUENCES OF PROOF—*continued.*

- date from which interest payable to surety, 691.
- separate creditor not entitled to interest till joint creditors paid in full, 691.
- creditors have interest out of surplus of separate estate, before payment of debt from separate to joint estate, 691.
- interest how calculated, 691.
- surplus of separate carried to joint estate before voluntary bond paid, 691.
- creditor by proving, abandons securities, 691.
- elects not to proceed against bankrupt by action, 692.
- undertaking to prove is an election, 693.
- taking step which involves proving, 693.
- formal discontinuance of action, &c. not requisite, 693.
- tender of proof, unless allowed no election, 693.
- bankrupt may have on record suggestion of proof by creditor, 693.
- and *stet processus*, where proof is by judgment creditor, 693.
- proof by plaintiff no stay of recovery by defendant of costs of nonsuit, 694.
- plaintiff should enter proof or claim on proceedings at law, 694.
- proof held (under 6 Geo. 4, c. 16, s. 59) to be relinquishment of action and costs, as well as of debt, 694.
- provisions of sect. 182 of Act of 1849, how enforced, 695.
- action, stay of, under sect. 182 of Act of 1849, to be by motion, not plea in bar, 696.
- bail discharged by proof, as well as defendant, 696.
- creditor holding bankrupt in execution, discharges him, by electing to come in under bankruptcy, 697.
- proper course where bankrupt held in execution, 697.
- election, where creditor, after adjudication, takes bankrupt in execution, 697.
- where creditor holds bankrupt till certificate, 697.
- executor of executing creditor, not opposing bankrupt's discharge from prison, may prove, 697.
- trustee committed by Court of Chancery not discharged on proof by cestuis que trust, 697.
- no election by acceptance of office of assignee, 698.
- detaining creditor obtaining leave to prove, must discharge bankrupt, 698.
- no election by suing out attachment in existing suit or commencing, &c. action, unless execution taken, 698.
- election, other cases of, 698.
- creditor, proving while detaining bankrupt, must pay costs of discharge, 699.
- petition for adjudication, election only as to debt, the ground of petition, 699.
- proof of part of debt bars action as to whole, 699, 700.
- but action may be brought for unproved part, 700.
- claim, entry of, for sum to be found due by suit, no stay of suit, 700.
- where persons other than bankrupt, parties defendant to suit, course as to proof, 700.
- proof by assignor of debt bars suit, &c. by assignee of debt, 700.
- drawer taking up bill proved against acceptor, right of to sue acceptor, *quære* (*Mead v. Braham, Ex parte Lobbon*), 700.
- proof against one partner, &c., no election not to sue others, 701.
- but creditor proving against estate of one, and suing all, must indemnify former, 701.
- securities given up in ignorance of value, on proof, not restored, 702.
- assignees and creditors proving deemed judgment creditors and entitled to Ba certificate (Act of 1849, s. 257), 702.
- Ba certificate to have effect of judgment of superior court of Westminster, 702.
- power of assignees to issue execution on such certificate, 703.
- order of court necessary (under Act of 1849, sect. 259) to discharge bankrupt taken in execution, 703.
- debtor entitled (under sect. 259) to discharge after twelve months, 703.
- application of sects. 257, 258, 259, Act of 1849, where bankrupt outlawed, 703.
- where protection expired and no extension obtained, 703.
- certificate under sects. 257, 258, 259, was for amount due, not amount proved, 703, 704.
- power of creditor to take debtor, not to discharge him, 704.
- sect. 257 (Act of 1849) applicable, where protection refused for any cause, 704.
- Ba certificate, grant of, was ministerial only and might have been made repeatedly, 704.
- court of law issuing execution on Ba certificate, not bound to inquire grounds for refusal of certificate of conformity, 704.

CONSEQUENCES OF PROOF—continued.

all creditors proving, entitled formerly to B a certificate, 704.
 discharge of debtor, no bar to his being again taken, under B a certificate, 704.
 as to practice under sects. 257, 258, 259, Act of 1849..705.
 no question upon them, in bankruptcy occurring since October, 1861..705.
 proof by creditor under adjudication no bar to disputing it, 705.

CONSOLIDATION OF ESTATES,

with creditors' consent, effect of, 688.
 consolidation, creditor retains double proof upon, where, 688.

CONSOLIDATION OF PROCEEDINGS.

See *Transfer, &c. of Proceedings—Annulling—Procedure to obtain Adjudication.*

CONSULAR COURTS IN TURKEY, &c.,

jurisdiction in bankruptcy and insolvency conferred on British Consular Courts by Orders in Council, 985.
 Consular Courts in Turkey, China and Japan have jurisdiction in bankruptcy and insolvency, 985.

CONTINGENT DEBTS, PROOF FOR,

debts payable on contingency could not have been proved formerly, 573.
 provable now, how, 574.
 sect. 177, Act of 1849, only affects debts payable on contingency, not liabilities which may never become debts, 574.
 enactment is retrospective and allows proof in bankruptcy subsisting before act, 575.
 bond as security to indemnify against costs in actions, not contingent debt, 575.
 bond for due performance of duty by another and payment on demand, where no demand made before bankruptcy, not contingent debt, 575, 576.
 covenant to pay uncertain sum during uncertain time, not contingent debt, 576.
 nor bond on contingency to pay certain sum at uncertain time, 576.
 guarantee for sum certain provable before due, as contingent debt, 576.
Ex parte Meyer overruled, 577.
 distinction between cases of guarantee against non-payment of debt due and indemnity against tort not committed, 577.
 no proof against surety for instalments of annuity not yet due, 578.
 no proof on bond of indemnity given by bankrupt to sheriff to give up goods seized in execution, 578.
 bond of indemnity by assignees of lease to assignor against covenants, not provable for damages accrued before bankruptcy, if not then paid by assignor, 578.
 where undertaking was to pay balance of bill accepted and to deliver up bill on future day or indemnify acceptor, no proof allowed; bankruptcy occurring before day for delivery of bill, 578.
 bond for payment of sum to be found due in action or for render of debt not provable on bankruptcy of obligee pending action, 579.
Lane v. Burghart, 579.
 costs given, after certificate, in action against bankrupt not provable, 579.
 right of action for damages on covenants not provable under this head, 580.
quære, as to proof on covenant to pay money on demand though no demand made before bankruptcy, 580.
 future calls on railway shares, &c., not provable, 580.
 calls already made, provable, 580.
 calls on winding-up order, 580.

CONTINGENT LIABILITY, PROOF FOR,

liability contingent at time of bankruptcy may be admitted to claim, and after contingency has happened and demand been ascertained, demand may be proved, 581.
 claim against sureties, whose principals have not made default at date of bankruptcy, 581.
 contract to indemnify against failure of principal to pay money, where default has not yet been committed, 582.
semble, demand of surety against co-surety for contribution on payment after bankruptcy of principal debtor falls under this head, 582.
 whether covenant to pay premiums on policy or to indemnify against payment of them, provable as to premiums accrued after bankruptcy, 582.
Young v. Winter, 582.
Warburgh v. Tucker, 582.

CONTINGENT LIABILITY, PROOF FOR—*continued.*

- cases of this kind met by sect. 154 of Act of 1861 . . . 583.
- guaranty, for payment of price of goods not yet delivered, not under this head, 583.
- or for payment of money not yet advanced, 583.
- where money is to become not payable merely but due on a contingency, no claim allowed, 583.
- claim against surety for annuity allowed as to instalments not due at bankruptcy (*sed quære*), *White v. Corbett*, 583, 584.
- liability under this section must be to pay sum of money which may be liquidated without action, not to pay damages, 584, 585.
- Parker v. Ince* remarked on, 585.
- future calls not provable, 586.
- promissory note delivered in blank not claimable, 586.
- whether covenant to pay sum on demand, no demand being made before bankruptcy, is within sect. 75, Companies' Act, 1862, *quære*, 586.
- proof for premiums on policy or for indemnity against payment of annuity, 586, 587.

CONTRACTS,

- proof in respect of distinct, 675.

CONTRIBUTION,

- proof for, allowed, when solvent partner pays debts of firm, 684.
- none, *semble*, allowed by assignees of joint stock company, 685.

CONTUMACY,

- bankrupt may be committed for, in not furnishing accounts, 491.

CONVEYANCE, FRAUDULENT. See *Act of Bankruptcy.*

- fraudulent conveyance made by bankrupt, when insolvent, without consideration, 437 et seq. See *Voluntary Conveyance.*

COPYHOLDS,

- commissioner's order needed to vest bankrupt's property in, 261.
- estate tail in. See *Estates Tail.*
- court might formerly bargain and sell copyholds by deed indented and inrolled in manor courts, and might appoint person to surrender, 269.
- authority to surrender did not want power of attorney's stamp, 269.
- court now to make vesting order in purchasers, 269.
- vendors of copyhold lands to compound with lord for fines, &c., 269.
- no relation of title in case of, 270.
- practice in sale of, 270.
- assignees necessary parties to bill for specific performance of contract respecting, 270.
- cases on law of bankruptcy as modified by the customs of particular manors, 271.

COSTS. See *Damages and Costs.*

- of trader debtor summons. See *Trader Debtor Summons.*
- jurisdiction of court to detain on warrant for, 68, 69.
- attorney's bill of, good petitioning creditor's debt, 178. See *Petitioning Creditor's Debt.*
- quære*, judgment for as on nonsuit, good petitioning creditor's debt, 179. See *Petitioning Creditor's Debt.*
- order for in divorce court not good petitioning creditor's debt, 179. See *Petitioning Creditor's Debt.*
- to be reckoned as debt for purposes of petition, sect. 97 of Act of 1861 . . . 180. See *Petitioning Creditor's Debt—Adjudication, Procedure to obtain.*
- proof for, 589 et seq. See *Damages and Costs.*
- on interlocutory applications. See *Damages and Costs.*
- costs and deposit of mortgagee bidding at sale of security, 637.
- costs or losses by default of mortgagee, 639.
- equitable mortgagee not entitled to, of order of sale, unless mortgage evidenced by writing, 639, but see 763 et seq.
- to be paid by official assignee upon appointment of creditors' assignee, 726, 727.
- bill to be signed and delivered before action, 1075.
- for costs of prosecution of bankrupt. See *Crimes and Penalties.*
- property recovered by solicitor, power of courts to charge with costs (23 & 24 Vict. c. 127, s. 28), 1075.
- that act applicable to court of bankruptcy, *quære*, 1076.
- lien for costs, &c., bankrupt's books and papers not subject to, 1076.
- but solicitor has, *semble*, for business done before bankruptcy, 1076.

COSTS—*continued.*

solicitor has, on property of bankrupt coming to his hands other than books and papers, 1076.

costs, petitioning creditor bears his own, down to choice of assignees, 1061.

debtor petitioning against himself within rule, 1061.

court, after choice, orders payment out of estate, 1061.

costs, &c., of official assignee ordered out of estate, 1061.

official assignee now paid by salary, 1061.

costs, what petitioning creditor will be allowed besides those in General Orders, 19th October, 1852, r. 114..1062.

of solicitor, where no assets, payable by whom, 1062.

refused where guilty of fraud, 1062.

costs, any court acting under Act of 1861 may award (sect. 213), 1062.

to bind land as to purchasers must be registered, &c., 1062.

court has ordered payment of by one respondent for another, 1063.

of proof payable by person proving, 1063.

messenger's bill, creditors' assignees not liable to messenger for, before Act of 1861..1063.

how messenger acts under creditors' assignees, 1063.

messenger's fees, till choice, petitioning creditor liable for, 1063.

costs, what, to be paid by assignees, 1063.

assignees liable for, where no assets, &c., 1063.

but solicitor cannot in bankruptcy compel payment of his, where no assets, 1064.

assignees held liable for, where commission invalid, 1064.

messenger's bill, assignees held liable for, even after final dividend, 1064.

but not for fees accrued before choice, 1064.

assignees cannot charge estate with, of suit carried on without consent, 1064.

nor with interest on solicitor's bill, 1064.

as to payment of fees, &c. by stamps. See *Stamps and Fees*.

costs, taxation of, to be as prescribed by sects. 13 and 14 of Act of 1861..1067, 1068. See *Taxing Master—Registrar*.

petitioning creditor entitled to full, when acting as solicitor for himself, 1068.

re-audit of accounts relating to, allowed after long interval, 1068.

in actions at law, &c., incurred by assignees to be taxed, 1068.

of official assignee appearing only to consent, not allowed, 1068.

solicitor's bill of, conditions of taxation of by petitioning creditor, 1069.

solicitor may have bill for, taxed, with order for payment, where no assets, 1069.

bill of, of attorney, not admitted of court of bankruptcy, 1069.

of solicitor of removed assignees, not taxed if paid, 1069.

discretion of court in taxation of, not excluded by table of fees, 1070.

cannot tax bill for business done before fiat, 1070.

nor award compensation for services, 1070.

costs for expenses before fiat, must be for matter ancillary to fiat, 1070.

just allowances, what expenses deemed to be, 1071.

on order to tax, court refuses inquiry as to negligence, &c. of solicitor, 1072.

costs, with what, assignees may charge estate, 1072.

what may be taxed in bankruptcy, 1072, 1073.

under abandoned fiat, 1073.

bills of same assignee in different matters, 1073.

order to tax paid bill, contents of petition for, 1073.

paid and unpaid bills, order to tax, after delay, 1073.

delay in seeking taxation, 1073.

taxing, costs of, where disallowance of one-sixth of bill, 1074.

taxation, court has no jurisdiction to order costs of, from executor of deceased solicitor, 1074.

appeal against commissioner's order, costs of, 1074.

recovering costs, remedies for, 1074.

lien on assets, petitioning creditor and assignees have, 1074.

but must apply to court to enforce, 1074.

solicitors of petitioning creditor have remedy by action against clients or by petition, 1074.

petitioning creditor, for what expenses liable, 1074.

how to be reimbursed, 1074.

solicitor's bill to choice, how paid, 726, 727, 1075.

jurisdiction of court as to payment of, 1075.

remedy of solicitor against assignees, action or petition, 1075.

COSTS—continued.

- attachment for costs in divorce court, bankrupt freed from by order of discharge, 965.
- assignees ordered to pay, of administration suit, in what cases, 851.
- of issue under Interpleader Act, where they fail, 852.
- how payable, where bankrupt in prison brought before court, under sect. 112, Act of 1849..905.
- costs of prosecution of bankrupt, out of what fund payable, 1102. See *Crimes and Penalties*.

COUNTY COURTS,

- jurisdiction of commissioners may be transferred to, 9.
- new may be created within jurisdiction of commissioners, 10.
- appointment, qualifications, &c. of judge of, 10. See *Gaol*.
- registrars of, to act as official assignees. See *Official Assignees*.
- jurisdiction of, under Act of 1861..56.
- oath of judge, 56.
- jurisdiction in insolvency of, abolished, 56.
- duties of registrars and high bailiffs, 56. See *Registrar—High Bailiff—Official Assignee—Messenger*.
- general orders in, 56, 57. See *General Orders*.
- evidence in, as in other courts, 57.
- registrars, on Lord Chancellor's order, to exercise powers of registrars in bankruptcy, 57.
- order thereupon, 57.
- appeal from, 57.
- jurisdiction, how conferred on, in each case, 57, 60.
 1. by transfer to judge of powers of commissioner generally, 57, 58.
 2. by transfer order of London court, 58.
 3. where, on debtor's petition, debts sworn under 300*l.*, 58.
 4. where prisoner petitions *in formâ pauperis*, 58, 59.
 5. where registrar, on discharging debtor from prison, directs adjudication to be prosecuted in, 59.
 6. where proceedings transferred to, by meeting of creditors, 59, 60.
- jurisdiction obtained by mistake, not lost by discovery of mistake, 59.

COURT OF BANKRUPTCY,

- Lord Chancellor to regulate sittings of, in vacation, 15.
- instituted, 6, 7.
- judges of, to form court of review, 7.
- to be a court of record, and have powers of superior courts, 8, 67, 68.
- as well as of insolvent court, 8, 68.
- jurisdiction of, 8, 68 et seq. See *Jurisdiction*.
- commissioner constitutes, 14.
- to sit daily, 15.
- Basinghall-street. See *Buildings*.

COURT OF REVIEW,

- instituted, 7.
- abolished, 7, 8.

COVENANTS, PROOF FOR,

- absolute covenant to pay sum certain, 594.
- to pay money at uncertain time, 595.
 - where interest payable meanwhile, 595.
 - not payable meanwhile, 595.
- covenant to repair, and dilapidations ascertained before bankruptcy, 596.
- covenants for title broken before bankruptcy, 596.
- covenant to pay money consideration arising after bankruptcy, 596.
 - to pay money on bankruptcy of covenantor, 596.
 - to pay money on contingency other than bankruptcy, 596.
 - to pay money, and interest only given over on bankruptcy, 598.

CREDITORS,

- intent to defeat, delay, &c. See *Act of Bankruptcy*.
- choice of assignees, what creditors entitled to vote for, 890. See *Addenda, Re Dobbs*.
- creditors may petition for removal of creditors' assignee, &c., 890.
 - entitled to printed copies of accounts, 890.
 - may inspect list of creditors who have proved, 890.
 - may inspect and take copies of proceedings, 890.
 - may examine creditors' assignee's statement of assets, &c., 890.

CREDITORS—continued.

- creditors' assignee entitled to dividend, and in case of a surplus, to interest, 890.
- only priorities allowed as between creditors, enumeration of, 891.
- specialty and simple contract debts, dividends are without distinction of, 891.
- creditor entitled to notice by post of dividend, 891.
- are privileged from arrest in coming to prove, 891. See *Bankrupt—Practice on Proof of Debt—Protection*.
- petitioning creditor has like privilege, attending to propose himself as assignee, &c., 891.
- any one creditor may move court to compel performance of duty by creditors' assignee, 891.
- might formerly compel assignees to sell, but not prevent sale, 891.
- sed quære* as to this rule now, 891.
- should apply for meeting of creditors, *semble*, and obtain resolution by them, 891.
- See *Assignees—Meeting of Creditors*.
- disputes between, and assignees, subject to Court of Bankruptcy, 891.
- entitled to notice of new choice of assignees in Gazette, 891.
- entitled to have dividend declared, 892.
- their remedy for dividend petition, not action at law, 892.
- should have notice of resolution that no further proceedings to be taken in bankruptcy, 892.
- may insist on being heard against bankrupt's order of discharge, 892.
- exceptions, 892.
- may oppose before court of appeal, although they did not before commissioner, 892.
- may be called as witnesses, without having proved, 892.
- security, &c. given by, to forbear opposing discharge, void (sect. 166, Act of 1861), 892.
- except in hands of bonâ fide holder for value without notice, 892.
- money paid to, for withdrawing opposition may be recovered with penalty, 893.
- a bond is a contract within sects. 164 and 166.. 893.
- bill given to, under Act of 1849, not saved by proviso in sect. 166, Act of 1861.. 894.
- penalty of treble value under sect. 167, Act of 1861.. 894.
- petitioning creditor, receiving more than other creditors forfeits debt, &c., 894.
- stay of proceedings, creditor nominated at meeting may apply for stay of, 895.
- See *Meetings of Creditors*.
- perjury, creditor swearing falsely, indictable for, 895. See *Crimes and Penalties*.
- protection under sect. 112, Act of 1849, is only against creditors under the bankruptcy, 895.
- proxy, creditors may vote at meeting by, 895.
- For *arrangements with creditors*, 895. See *Arrangements*.
- public sitting for last examination (sect. 148, Act of 1861), 899.
- meeting for declaration of dividend, and to determine bankrupt's allowance, 899, 900.
- periodical meetings for declaration of dividends, 900.
- postponement of, in power of creditors, 900.
- three-fourths in number and value may resolve to wind up under arrangement deed, 900.
- bankrupt accounting for property by fictitious losses occurring three months before adjudication, a misdemeanor, 900. See *Crimes and Penalties*.
- proxies for creditors' meetings require no stamps, 900.
- creditor, definition of under bankruptcy acts, a person having provable claim, whether a debt or not, 1012.

CREDITORS HOLDING SECURITIES, PROOF BY, &c.,

- security realized before proof, residue only provable, 648.
- assignees' right of possession of security binding bankrupt, 648.
- every written security to be exhibited at time of proof, 648.
- production of office copy of judgment, 649.
- proof on lost bill upon indemnity, 649.
- creditors holding securities not to receive more than others (12 & 13 Vict. c. 106, s. 184), 629.
- execution levied by seizure and sale an exception, 629.
- difference in enactment (6 Geo. 4, c. 16), 629, 630.
- garnishee order under 17 & 18 Vict. c. 125, no lien on debt in garnishee's hands within exception, sect. 184, Act of 1849.. 630.
- money brought into court subject to lien on plaintiff's behalf, *semble*, 630.

CREDITORS HOLDING SECURITIES, PROOF BY, &c.—*continued.*

- as to money paid in lieu of bail by defendant after act of bankruptcy, 630.
- creditor holding security may have it valued and prove for balance, practice as to (General Order, 19th October, 1852, rules 55 et seq.), 630.
- Lord Loughborough's order, 8th March, 1794, related to legal mortgages only, 631.
- court cannot sell security, except at creditor's request, 631.
- sale of part of security ordered by court, 632.
- where part of security realized by creditor, proof for balance allowed on surrender of residue of security, 632.
- one security to cover two debts, proof allowed for one, although security retained, 632.
- creditor allowed to prove for part of debt and retain security for residue, but dividends impounded, 632.
- mortgagee allowed to prove and retain security where equity of redemption mortgaged to more than full value, 632.
- court to direct mode of realizing property, 633.
- mortgagee may take at a value, with assignees' assent, if for benefit of assets, 633.
- creditor, obtaining order for sale may not abandon and petition for leave to prove, retaining security, 633.
- court cannot compel puisne mortgagee to join in sale, 633.
- powers of court under Order of 8th March, 1794, not enlarged by Act of 1849, nor General Order, 1852.. 633.
- court has no jurisdiction to determine priorities except by consent, 633.
- decision of, though with consent, subject to appeal, 633.
- court's power, to order sale of legal mortgage, discretionary, 633.
- sale at instance of puisne incumbrancer, 633.
- equitable mortgages by deposit within terms of General Order, 19th October, 1852.. 634.
- equitable mortgage of railway shares, 634.
- mortgage security deposited by way of mortgage, sale will be for bankrupt's interest, 634.
- such sale may be without notice to person claiming paramount interest, 634.
- pledge of chattels within General Order, 19th October, 1852, rule 55, whether made by bankrupt or other person, 634.
- grantee of rent-charge or annuity charged on land is a "creditor holding security," 634.
- value of, to be computed and proof allowed for deficiency, 634, 635.
- annuity creditor holding policy, &c., sale of policy, &c., and proof for deficiency, 635.
- inquiry, ordered by court, into circumstances of security, 635.
- order for sale not made by court where application of money doubtful, 635.
- application by sub-mortgagee for sale of security, on what terms granted, 635, 636.
- where mortgage of equitable interest was without power of sale, claim allowed to be entered and inquiry directed, 636.
- mortgagee entitled generally to common order and sale not postponed without his consent, 636.
- contract, not to call in within certain period, no bar to order, 636.
- no need for order when mortgagee and assignees consent, 636.
- discretionary with commissioners to order sale by private contract, 636.
- mortgagee may bid at auction with leave of court, 636.
- but not, if he has carriage of sale, 637.
- modes of protecting estate where leave to bid granted, 637.
- bonâ fide* purchase by mortgagee without leave, 637.
- costs and deposit of mortgagee bidding, 637.
- power of sale in mortgage exercisable without leave, 637.
- assignees conduct sale by order, 637.
- sales by order opened, 638.
- forfeiture of security where mortgagee proves, concealing mortgage, 638.
- where mortgage being held for part of debt, proof is entered and dividend received for whole, 639.
- mortgagee may not retract proof where choice of assignees, &c. influenced by proof, 638, 639.
- equitable mortgagee not entitled to costs of order of sale, unless mortgage evidenced in writing, 639.
- (*See further, for costs of petition in such case, Interlocutory Application.*)
- costs or losses by default of mortgagee, 639.
- mortgagee buying pays costs of sale to assignees' solicitor, 639.
- not bound to give benefit to bankrupt's estate, 639, 640.

CREDITORS HOLDING SECURITIES, PROOF BY, &c.—*continued.*

- no order for sale, unless bankrupt the mortgagor, 640.
- surety may have, of security given as indemnity, 640.
- admission to proof of creditor holding property claimed by assignees, 640.
- valuation of property held in pledge and proof for residue, 640.
- allocation of security, held generally, to unprovable demands, 640, 641.
- where security insufficient, interest allowed only to bankruptcy, 641.
- but assignees redeeming pay interest up to redemption, 641.
- rents of mortgaged property applied to keep down interest after commission, 641.
- mortgagee entitled to rents of mortgaged property of bankrupt only from entry or order for sale, 642.
- equitable mortgagee, giving notice to tenant, not entitled to rent till order for sale, 643.
- mortgagee not entitled to rents by concurring in lease by assignees, 643.
- equitable mortgagee, entering on bankrupt's absconding, entitled from entry, 643.
- claim of mortgagee to rents where sale delayed at assignees' request, 643.
- contract with assignees for possession from certain date gives mortgagee rents from that date, 644.
- interest of property sold and invested pending appeal, 644.
- mortgagee may require redemption of all mortgages by same mortgagor, or none, 645.
- whether in suit for foreclosure or redemption, 645.
- rule the same in bankruptcy as in chancery, 646.
- foreign attachment on bankrupt's goods, must be given up before proof, 646.
- creditor who has levied execution by seizure and sale allowed to prove for residue, 646.
- but must not have had notice of prior act of bankruptcy, 646.
- sects. 133 and 184 of Act of 1849 to be read in connexion, 646.
- setting aside judgment by *nil dicit* given shortly before bankruptcy, 647.
- jurisdiction of court over creditors who have not proved, 647.
- may restrain creditor, who has proved part of debt, from execution for residue, 647.

CRIMES AND PENALTIES,

- penalty, where officers of court of bankruptcy take fees improperly, 1090.
- mode of enforcing, 1091.
- for fraud, &c., as to stamps, 1091.
- witnesses guilty of perjury, 1091.
- false declarations for proof of debt, &c., 1091, 1092.
- forging signature of commissioner, seal of court, &c., 1092.
- misdemeanors, persons guilty of, and penalties for, 1092.
- non-surrender within sect. 221, Act of 1861, clause 1, construed strictly, 1093.
- but onus of proof as to intent, &c., upon bankrupt not surrendering, 1093.
- books and papers, bankrupt not delivering up, &c., liable to committal, 1094.
- concealment, &c., of property by bankrupt, sect. 221, clause 3.. 1094.
- criminal if within sixty days before adjudication, 1095.
- proving false debts, 1095.
- omitting property from schedule, 1095.
- concealment of books, &c., sect. 221, Act of 1861.. 1095.
- falsification, &c., of books, &c., with intent to conceal affairs, 1095.
- presumed object of bankruptcy law, equal division of property, 1096.
- mortgage, &c., by bankrupt with fraudulent intent, clause 8, sect. 221.. 1096.
- offence within clause 8, division of property against law of bankruptcy, *semble*, 1096.
- fraudulent preference, priority of creditor preferred, not an ingredient of, 1097.
- formerly ground for refusal, &c., of certificate, 1097.
- fictitious losses, bankrupt accounting for property by, 1097.
- obtaining goods on credit with intent, &c., 1097.
- pledging goods obtained on credit and not paid for, sect. 221, clauses 10 and 11.. 1097, 1098.
- fraudulent obtaining, &c., under sect. 253, Act of 1849.. 1098.
- offence must have been within three months before filing petition, 1098.
- misdemeanor, prosecution for, under sect. 159, Act of 1861.. 1099.
- bankrupt may be tried for, before Court of Bankruptcy with or without a jury, 1099.
- or Court of Bankruptcy may hand over prosecution to criminal courts, 1099.
- commissioners, jurisdiction of, as to offences within sect. 221, Act of 1861.. 1099, 1100.

CRIMES AND PENALTIES—*continued.*

- prosecutor, court may appoint, 1100.
- prosecution, costs of, 1100.
 - discretion of commissioner as to directing, 1100.
- application to prosecute, how made, 1101.
- power of court to direct reference to attorney-general, 1101.
- power of court to commit persons disobeying order of court, 1101.
- indictment under Act of 1861..1100.
- none ordered under sect. 225, Act of 1861, except on strong *prima facie* case, 1101.
- prosecution, if without direction of court, no costs of, out of chief registrar's account, 1102.
- order for costs out of bankrupt's assets, 1102.
- Act of 1849, sect. 233, applies to criminal as well as civil cases, 1103.
- gaoler refusing to receive bankrupt or person committed under Act of 1861, penalty on, 1103.
- monies forfeited under Act of 1861, how recovered, 1103.
- when recovered, to be paid to chief registrar's account, 1103.

CROWN,

- not bound by bankrupt laws, 968.
 - extent by, against bankrupt's after-acquired property, not barred by order of discharge, 968.

DAMAGES AND COSTS, PROOF FOR,

- difference formerly between debts and claims for damages as to proof, 587.
 - no proof on breach of contract sounding in damages only, 587.
- still law, where breach of contract does not occur till after bankruptcy, 588.
- proof for unliquidated damages on contract, 588.
- no alteration in law as to damages on tort, 589.
- where action would lie either in tort or contract, *semble*, claimant has option, and if he does not prove, is not barred by discharge of bankrupt, 589.
- costs in action of debt after verdict became annexed to debt and might be proved, when taxed, if verdict before bankruptcy, 589.
- secus*, as to costs in action for damages, 590.
- where judgment signed in same term as bankruptcy occurred, it related to first day of term and became provable, 590.
 - if signed after bankruptcy, without notice, it was a protected transaction, 590.
- where bankruptcy occurred before verdict, though debt was provable, costs were not, unless liquidated and made payable by agreement or the like, 590.
 - but costs in such case barred by discharge, 590.
- costs of defendant on nonsuit, &c., no debt till final judgment, 591.
- where costs to abide award not made till after bankruptcy, though verdict for plaintiff before bankruptcy, costs not provable, 591.
- plaintiff or defendant obtaining judgment, &c., entitled to prove for costs, 591.
- judgment must have been before bankruptcy, 591.
- proof for money, costs, &c., of which payment may be enforced by process of contempt, 591.
- remarks on section, 592.
- semble*, if judgment before bankruptcy subject to award and costs to abide event, costs would be provable though award made after bankruptcy, 592.
- costs of *sci. fa.* to revive judgment or of writ of error provable, if judgment were so, 592.
- interlocutory costs payable under order provable formerly if taxed before bankruptcy, and, *semble*, even if not taxed now, 592.

DAMAGES AND COSTS, See *Costs.*

- petitioner must pay, if petition unnecessary, 762.
- of expunging scandal, 762.
- equitable mortgagee entitled to, when, 639, 763.
 - not refused where want of contract in writing supplied by part performance, 764.
 - nor if, by custom, note in writing not required, 764.
 - nor where solicitor has lien for costs, 765.
 - of assignees, 765.
- on taxation of, what fees to counsel allowed, 765.
- petitioner pays, of person served, where appearance unnecessary, 766.
- how provided for, 767.
- as to liability of official assignees for. See *Assignees.*

DAMAGES AND COSTS—continued.

- of parties served with notices of motion, 767.
- in bankruptcy, when recoverable at law, 767.
- affidavits filed though not read, included in, 768.
- but not if irrelevant, 768.
- of preparing special case, part of costs of appeal, 768.
- order committing for non-payment of, on what terms suspended, 770.
- order for, enforceable against M. P. by distringas, *quære*, 770.
- now recoverable as on a rule of superior courts, (Act of 1861, sect. 213)..770. See also *Interlocutory Applications, Practice on*, 770 et seq.
- costs in case of improper charges in petition, 743.
- costs, security for, where petitioner out of jurisdiction, 758.
- under power vested in court by Act of 1861, sect. 213..758.
- party succeeding entitled to, generally, 759.
- exceptions, 759.
- bankrupt gets, if petition against certificate dismissed, 760.
- petitioner may forfeit right to, by laches, 760.
- none in general on petition which succeeds against decision of commissioner, 760, 761.
- exceptions, 761.
- not given unless prayed, except in cases of fraud, 761.

DEBTS,

- due to bankrupts. See *Choses in Action*.

DEBTS PAID TO THE CROWN AFTER BANKRUPTCY,

- crown not bound by bankrupt law, 417.
- actual assignment by appointment of assignees may interfere with rights of crown, 417.
- semble*, there can be no fraudulent preference of the crown, 417.
- if writ of extent be tested before appointment of assignees, it will have priority, 417.
- and if tested same day, it still has priority, 417.
- if goods of land tax collector be seized under warrant from land tax commissioners, before the appointment of assignees under his bankruptcy, debt to the crown must be paid before property can be recovered by assignees, 418.
- excise acts generally give specific lien for duty on excisable articles which will be in such case liable in hands of assignees, 418.
- and even for double duties, &c., as penalty, 418.
- warrant, to seize goods generally of bankrupt, bad for penalties, 418.
- lien for stage coach duty attaches on each coach, &c., not on stock of coaches, &c., 418.
- goods and chattels are liable to arrear of assessed taxes, if seized before assignees can take them, and for duties for the year, 418, 419.
- course of practice to try the right, 419.
- assessed taxes have priority in distribution in bankruptcy for one year, 419.
- assessment for poor rates is a provable debt, 419. See *Fraudulent Extents in Aid*.

DEBTOR'S PETITION FOR ADJUDICATION,

- declaration of insolvency, and proof of trading and assets, formerly necessary, 221.
- infant or married woman may be bankrupt on their own petition, 221.
- debtor's affidavit, *quære*, what is it to contain, 222.
- where debtor's petition should be filed, 222.
- if debts under 300*l.*, where, 222.
- forms, 222.
- three day statement, 222, 223.
- estate paper, 223.
- high bailiff to send notice to creditors, 223.
- debts to be reckoned for purposes of petition, 223.
- "costs due" in respect of debts, 224.
- "interest" under 97th section of Act of 1861..224.
- section goes only to amount of debt, not to its nature, 224.
- if debtor does not proceed, court may adjudicate on creditor's petition, 225.
- notice to gaoler by debtor in prison or in custody of intention to petition, 225.
- prisoner must pay fees for bringing him up, before the warrant issues, 225.
- how far misdescription of debtor is ground for dismissal of his petition, 225.
- amendment sometimes allowed, 225.

DEBTOR'S PETITION FOR ADJUDICATION—*continued.*

- or petition dismissed with leave to file a new one, 225, 226.
- trader should describe him, if in partnership, as of his firm, &c., 225.
- cases on former law as to debtor's petition, 226.
- bankruptcy related only to filing of declaration of insolvency, 226, 250.
- debtor's petition allowed on creditor's application, but certificate suspended till assets forthcoming, 226.
- same course where adjudication made on debtor's petition, on evidence of assets, which were however not forthcoming, 226.
- where assets were insufficient by reason of subsequent matter not the fault of bankrupt, certificate was allowed, 226.
- adjudication was valid till annulled, though assets had been over-estimated at 150*l.*... 227.
- assets assigned by way of fraudulent preference were still assets, 227.
- but if assignment were act of bankruptcy, if made before declaration of insolvency, it could not be set aside as an act of bankruptcy on debtor's adjudication against himself, 227.
- no objection to debtor's petition that chief object was to release bankrupt, 227.
- evidence required of assets beyond debtor's oath, 227.
- debtor could not obtain adjudication unless he owed debts which would have supported creditor's petition, 227.

DEED OF ASSIGNMENT,

- as to what property will pass by, under sect. 192, Act of 1861... 1027, 1060. See *Arrangements with Creditors.*
- recital in, that composition to be in discharge of debts, equivalent to a release, 1027.
- rules of equity apply to deeds of arrangement where statutes silent, 1056 et seq.

DEPARTING THE REALM. See *Act of Bankruptcy.***DEPOSIT,**

- property held as, does not pass to assignees on bankruptcy, 368, 369.

DEPOSITIONS,

- copies of, furnished to bankrupt disputing adjudication. See *Adjudication*, 236 et seq.

DETAINDER,

- registration of deed no protection against, under prior arrest, 1039, 1047. See *Arrangements with Creditors.*

DISCHARGE,

- application for, of debtor arrested after grant of protection, to what court to be made, 1047 et seq.
- order of, creditors' assignee entitled to, after affairs of bankrupt wound up, 889. See further, *as to discharge of bankrupt*, *Bankrupt*, 912 et seq.—*Discharge, Order of.*

DISCHARGE FROM ARREST OR CUSTODY, 905 et seq. See *The Bankrupt.***DISCHARGE, ORDER OF,**

- certificate of conformity under Act of 1849... 948.
- certificates, three classes of, under Act of 1849... 948.
- classification of, abolished by Act of 1861... 948.
- discharge, suspension of, 948.
- where suspended, time of, and reasons for suspension, to be stated in discharge, 948.
- if bankrupt has been imprisoned under Act of 1861, to state fact of sentence, &c., 948.
- proceedings in bankruptcy may be suspended by creditors in meeting, 948. See *Meetings of Creditors.*
- discharge, bankrupt may apply for order of, 949.
- court, after last examination, to appoint sitting to consider, 949.
- assignees, &c. may be heard against, 949.
- creditor proving before sitting for, may appeal against, though not opposing below, 949.
- joint creditors may now prove, *semble*, under separate adjudication, in order to oppose, 949.
- discharged, some partners may be, *semble*, pending appeal by others against joint adjudication, 949, 950.

DISCHARGE, ORDER OF—*continued.*

- discharge, examination by creditor opposing, 950.
- misdemeanor, bankrupt appearing guilty of, to be tried, 950.
 - and, if he himself require it, by jury, 950.
- indictment, court may order, of bankrupt in criminal court, 950.
- commissioner may himself try bankrupt with his consent, or, without it, direct criminal prosecution, 951.
- before ordering latter, court should investigate case, 951.
- criminal trial, court has discharged order for, in certain cases, 951.
- misdemeanor, not criminal to compromise, *sed quære*, 951.
- prosecution, prosecutor under sect. 159, Act of 1861 not to forego, without leave of court, 952.
- criminal trial under sect. 159, appeal from allowed, *semble*, 952.
- For costs of prosecution ordered by court, see Crimes and Penalties.*
- discharge, order for, dates from being pronounced, 952.
 - suspended or refused, if bankrupt guilty on trial under sect. 159..952.
- discharge may be suspended or refused, 952.
 1. if bankrupt has traded with fictitious capital, 952.
 2. or has not kept books of account, 953.
 3. or has been guilty of rash, &c. speculation, 953.
- in such cases court may, in alternative, make order as to after-acquired property, or imprison, 953.
- discretion of court under 3rd clause, sect. 159, limited, 953.
- fictitious capital, what, 954.
- contracting debts by fraud or false pretences, no ground now for refusing, &c. discharge, 954.
- clause 3, sect. 159, applied strictly, 955.
- "reasonable probability, &c.," meaning of contracting debts without, under Act of 1849..955.
- omitting to keep proper books, ground, under Act of 1849, for suspending, &c. certificate, 955, 956.
- nature of trade decisive of character of books as "proper," 956.
- under Act of 1861, "wrong intent" in not keeping, must appear, 956.
- "reckless trading," under Act of 1849, what, 956.
- trader in difficulties not bound to cease trading, 956.
 - question is, had he a prospect of surmounting them, 956.
- embarking in ventures, not within clause 3, unless with borrowed money beyond means of repaying, 957.
- clause 3, being penal, construed strictly, 957.
- vexatious defence of action, formerly ground to refuse certificate, 957.
- court not bound to state reasons for concluding bankrupt within clause 3..957, 958.
 - but may not refuse, &c. discharge, under sect. 159, without proof of offences, 958.
- discharge sometimes suspended, on appeal, till satisfactory accounts furnished, 958.
 - no power of annexing conditions to, except for enumerated offences, 958.
 - condition seldom annexed (formerly) for payment out of future property, 959.
 - will now, *semble*, be more often done, where enumerated offences exist, 959.
- payment out of future property directed to be made to assignees, 959.
- order of discharge, court will not annex condition to, if once obtained, 959.
- power of court, under sect. 159, to suspend, &c., discharge or imprison, not cumulative, 959.
- condonation of fraud by defrauded person, no ground, *semble*, to prevent refusal, &c., of discharge, 960.
- refusal of discharge, effect of, on bankrupt, less injurious now than of certificate formerly, 960.
- power of obtaining B a certificate, repealed, 960.
- now difficult to enforce conditions annexed to discharge, 960.
- only mode, *semble*, was to apply to court to seize assets in bankrupt's hands, 960.
- condition, attempt to enforce, by rule nisi to commit for breach, 961.
- discharge, where bankrupt dies before grant of, his representatives may apply for, *semble*, 961.
 - order of, notice of granting, to be advertised, 962.
- certificate, rules as to appeal against allowance of, &c., apply now to order of discharge, *semble*, 962.
 - but advertisement to be now in two local newspapers, as well as Gazette, 962.

DISCHARGE, ORDER OF—*continued.*

- discharge, court may now grant, where certificate formerly refused, 962.
- order of, releases bankrupt from debts provable under bankruptcy, 963.
- as to what debts are provable. See *Proof of Debts*.
- discharge a bar of all debts contracted in England or elsewhere, 964.
- but foreign or colonial discharge no bar to action by English subject on contract made here, 964.
- tort, discharge no bar to action of, 964.
- secus*, if cause of action, ground for proof and proved in bankruptcy, 964.
- breaches of trust, if not proved, discharge no bar to suit for, 964.
- breach of duty of attorney, how far certificate a bar for, or now order of discharge, *quære*, 964.
- certificate formerly discharged from process for money demands, *semble*, 965.
- costs in divorce court, discharge clears bankrupt from, 965.
- debt not due at date of bankruptcy, discharge no bar to action for, 966.
- bail discharged, if bankrupt defendant gets discharge before bail fixed, 967.
- obtaining certificate held to have effect of "render," 967.
- bail becoming bankrupt discharged on motion, 967.
- joint adjudication, discharge under, bars separate, under separate, joint debts, 968.
- crown not bound by bankrupt laws, 968.
- discharge no bar against extent by, 968.
- bankrupt assignee's effects not protected by discharge, if guilty of retainer, &c., 968.
- release of bankrupt, where arrested after discharge, 968, 969.
- plea of bankruptcy, formerly good answer to, that certificate obtained by fraud, 969.
- order of discharge, court now will not always support, 969.
- effect of, in case of partners or persons jointly bound, sect. 163, Act of 1861, 970.
- contract, &c. pending proceedings in bankruptcy, not binding on bankrupt, 970.
- to buy off opposition of creditors, &c., void, 970.
- receiving consideration for forbearing opposition, penalty for, 971. See *Crimes and Penalties*.
- rehearing of order of discharge, 971.
- where order suspended, subsequent property liable first to subsequent creditors, 971.
- subsequent property of uncertificated bankrupt liable first to subsequent creditors without notice, 971, 972.
- time for drawing up of order of discharge, 972.
- date of, 972.
- deposits on appeal against certificate, &c., rule as to, G. O., 19th October, 1852, r. 62..972.
- petition of appeal, creditors opposing discharge, to be served with, *quære*, 973. See *Interlocutory Applications*.
- appeal against grant or refusal of discharge, 973.
- no creditor to appeal against discharge, who has not proved before hearing below, 973.
- but he need not have opposed, 973.
- court of appeal, reversing refusal of discharge, should grant it, 974.
- where question as to discharge pending, *semble*, bankrupt should be in court, 974.
- on application against discharge, creditors' assignees to be served, *semble*, 974.
- form of order of discharge, 974.

DISCOVERY OF ASSETS. See *Assets, Discovery, &c. of*.

DISTINCT CONTRACTS,
proof in respect of, 675.

DISTINCT ESTATES,
what are, 676.

DISTINCT TRADES,
what are, 675.

DISTRICTS,
institution of, 7, 12.
continuation of, 12.
might be altered, 12.

DISTRICTS—*continued*.

definition and boundaries of, 12, 14. See *Commissioners—Country Commissioners—County Courts—Court of Bankruptcy*.
buildings for. See *Buildings*.

DIVIDEND,

dividend, practice as to, 727 et seq.
to be declared four months from adjudication or earlier if court directs, sect. 174, Act of 1861..727.
provision to be made for creditors residing at a distance and for pending claims, 728.
dividend list to be prepared by official assignee, 728.
liability of, for error in, 728.
creditor not discovering error till after final dividend, barred for laches, 728.
like proceedings at successive periods of four months, 728.
dividend, final, 729.
dividend lists how prepared, 729.
official assignee responsible for, 730.
commissioner to direct transfer from general to dividend account, 730.
and re-transfer where requisite, 730. (*For forms of orders for dividend, final dividend, &c., see Appendix, p. 1263 et seq.*)
dividend, creditor proving after, has right to previous dividends, before other creditors take new dividend, 730.
but such right available only on fresh declaration of dividend, 731.
every creditor proving, entitled to dividend, and to move for declaration of, 731.
court may delay dividend, 731.
dividend, creditor applying to open, pays costs, 731.
where delayed, creditor proving in interval may share, 732.
assignee, having personal claim against creditor, cannot set off against dividend, 732.
cannot withhold on any ground, without leave of court, 732.
overpaid creditor must refund excess, 732.
dividend, notice of, to be published in London Gazette, 732.
on each payment of, securities to be produced, 732.
or indemnity given, 733.
dividend warrant, payment of, 733.
dividend, order of commissioner necessary for person other than creditor to receive, 733.
or where warrant for, more than twelve months old, 733.
after long receipt of, title of recipient as assignee of proving creditor, assumed, 734.
warrants in hands of official assignee after twelve months, returned and cancelled, 734.
remedy for, 734 et seq.
no action to be brought for, creditor must apply to court, Act of 1849, sect. 190..734.
remedy for, by petition only between creditor and official assignee, 734.
account of, assignees may file bill for, against representatives of deceased assignee, 734.
assignee's defence to petition for, same as formerly to action for, 734, 735.
debt in respect of, cannot be disputed on such petition, 735.
must be made ground of distinct petition, 735.
where debt disputed and confirmed, assignee liable for costs and interest on dividend, 735.
dividends received, not refunded, though debt paid by collateral security, 735.
where fund set apart to meet, bears interest, creditors entitled to interest, 735.
and to interest out of surplus, 735.
interest, separate creditors have no right to, till joint creditors paid in full, 735.
but joint entitled to, out of surplus of joint estate, before division amongst separate estates, 735.
partner paying deficiency of joint estate, may prove against partners, before interest is payable, 736.
dividend sittings, joint and separate, 736.
where assets and debts of one of two estates (joint and separate) uncertain, ground for delaying full dividend on the other, *quære*, 736.

DIVORCE COURT,

decree for alimony, order of discharge frees bankrupt from, 965.
attachment for costs in divorce court, bankrupt freed from, by order of discharge, 965.

DORMANT PARTNER,

option of creditor to treat as partner, 670, 671.

DOUBLE PROOF,

not allowed by creditor of firms with common partners, 673 et seq.

creditor entering proofs on joint and separate bond, retains, on consolidation of estates, 688.

DWELLING-HOUSE. See *Act of Bankruptcy*.**ELECTION,**

of assignees, to accept leasehold interest of bankrupt, 288.

judgment creditor put to, on tendering proof, having taken debtor in execution, 544.

mortgagee may not retract proof, where choice of assignees influenced by proof, 638, 639.

by creditor holding joint and separate securities, 680 et seq.

what is, in respect of proof, and consequences of, 692 et seq.

ESTATES TAIL,

commissioner may dispose of lands of any tenure of which bankrupt is tenant in tail, 261.

or of which he is tenant entitled to a base fee, 262.

provisions for consent of protector, if any, 262.

deed as to freeholds to be enrolled in Chancery, of copyholds to be entered on court rolls, 262.

if protector consent by separate deed, that to be enrolled or entered in like manner, 262.

the entry to be indorsed thereon, 262.

provisions for enlargement of base fee, 262.

voidable estates created in favour of purchasers by tenant in tail becoming bankrupt, to be confirmed by commissioner's assurance, 262.

acts of tenant in tail, void against disposition by commissioner, 262.

subject to powers of commissioner, tenant in tail to reserve his powers, 262.

commissioner's assurance to be valid though the bankrupt be dead, 262.

commissioner's assurance, where estate in copyholds not equitable, to operate as surrender, 262.

assignees may recover rents, &c., as if entitled to reversion, 263.

provisions of 3 & 4 Will. 4, c. 74, relating to bankrupts apply to their lands in Ireland, 263.

deeds relating to lands in Ireland to be enrolled there, 263.

provisions as to lands to be sold, where the monies are to be invested in lands to be entailed, and where money is to be invested in like manner, 263.

as to lands in Ireland to be sold, and where the monies, &c., subject to control of Irish courts, 263.

provision for acknowledgment of deeds before enrolment, 263.

covenant for further assurance by tenant in tail bound assignees, 263.

clauses of Fines, &c., Act apply only where fiat issued before 1833..263.

former law as to bankrupt tenant in tail, 264.

no express saving of rights of former purchasers in older law, 264.

saving of such rights implied, 264.

where assignees are purchasers within 62nd section of Fines, &c. Act, 268.

EVIDENCE,

of intent to defeat, &c. creditors. See *Act of Bankruptcy*.

seal of Court of Bankruptcy, as, 1076, 1077.

proceedings purporting to be sealed with seal of court, receivable as (sect. 236, Act of 1849), 1077.

and see sect. 203, Act of 1861..1077.

judicial notice to be taken of seal of court, 1078.

admission of documents, 1078.

advertisements, when evidence, 1078.

on death of witness, office deposition or copy of, to be evidence, 1078, 1079.

forging seal of court, &c., a felony, 1079.

as to insolvency, 1079.

how to be taken, 1079.

affidavits in support of petition, 1079.

EVIDENCE—*continued*.

- how to be entitled, 1079.
- to be re-sworn, when, 1079.
- to be left with registrar, 1080.
 - statements in to be positive, 1080.
 - and limited to facts within deponent's knowledge, except in certain cases, 1080.
- in support of adjudication, admissible on petition to annul, 1080.
- but must be in answer to petition to annul, 1080.
- unless new evidence adduced in support of adjudication, court will grant application to annul, *semble*, 1080.
- notice to bankrupt of intention to use proceedings as evidence, 1080.
 - rule as to, not uniform, 1080.
- practice, where affidavits contradictory, 1081.
- onus of proof on bankrupt's application to annul, 1081.
- court in that case will allow bankrupt to answer depositions, *semble*, 1081.
- scandal and impertinence in affidavits, 1081.
 - who may apply to expunge, 1081.
- scandal, exceptions to report of, when to be taken, 1082.
 - solicitor liable to costs, &c. for, 1082.
- nothing material, pertinent or relevant, scandalous, 1082.
- affidavits verifying proceedings at law, not relevant, 1082.
- affidavits, &c., before whom to be sworn, 1082.
 - by prisoners, 1083.
 - attesting notary abroad, 1083.
 - not admissible, if sworn before solicitor of bankruptcy or clerk, 1083.
 - rule as to filing with registrar, 1083.
 - leave of court to use in reply, 1083.
 - registrar to indorse and file, 1083.
 - not to be sworn, till petition answered, 1084.
 - fresh, how far admissible, where petition stands over, 1084.
 - what read against respondent added by amendment, 1084.
 - irregularity in filing, waiver of, 1084.
 - production of documents referred to in, 1084.
- appeals, what new evidence now admissible on, 1084.
- examination before commissioner, how far evidence, 1085.
 - when used to contradict subsequent affidavit of same person, 1085.
 - or on petition to expunge, 1085.
- proceedings, notice to produce, on whom to be served, 1085.
- vivâ voce* examination, when ordered, 1085.
- on petition to expunge, notice to produce negotiable instrument, 1085.
- rule of Court of Queen's Bench not evidence, unless verified by affidavit, &c., 1085.
- affidavits in answer, with whom and when to be filed, 1085.
 - filing, no waiver as to jurisdiction, 1085.
 - in reply, to what they should be confined, 1085, 1086.
 - leave of court to use, 1086.
- vivâ voce* examination, where parties agree and *vice versâ*, 1086.
 - application for, when to be made, 1086.
 - usual to hear petition, before directing, 1086.
 - notice as to act of bankruptcy, subject of, 1087.
- liberty to examine *vivâ voce*, subject to order as to costs, 1086.
- affidavits as to information through third party, 1087.
- witnesses to be in attendance, 1087.
- fees on taking oaths, &c. in bankruptcy, 1087.
- declaration, bankrupt and his wife to sign (sect. 211, Act of 1861), 1087.
- proceedings in bankruptcy, officer of court to produce and give copies (sect. 232, Act of 1849), 1087.
- Sect. 232, Act of 1849, includes bankrupt tried for offences against sect. 221, Act of 1861.. 1088.
 - but not available for impeaching adjudication, 1088.
- criminal cases within sect. 233, Act of 1849.. 1088.
- powers in aid for obtaining, 1088 et seq.
- courts of bankruptcy in England to be auxiliary for taking affidavits to be used elsewhere, 1088.
- witnesses out of jurisdiction, provisions as to, of 17 & 18 Vict. c. 34, extended to Court of Bankruptcy, 1088.

EVIDENCE—*continued.*

courts in Scotland to be auxiliary to court in England in examination of witnesses, &c., 1089.
 courts in Ireland in like manner, 1089.
 courts in England to be auxiliary to Irish and Scotch courts, 1090.

EXECUTION. See *Act of Bankruptcy.*

goods taken in, to be sold by auction, 145.
 "the court," meaning of expression in sect. 74, Act of 1861..145.
 sheriff cannot deduct cost of advertisement from proceeds of sale, 146. See *Property of Bankrupt taken in Execution.*
 leave to issue, refused in certain cases of deeds under sect. 192, Act of 1861..1054.

EXECUTOR,

property held by bankrupt as, does not pass to assignees, 376.
 nor by bankrupt's wife as executrix, 376.
 any beneficial interest passes, 376.
 assets held by executor de son tort may pass under order and disposition clause, 376.
 applied by, to his own use by sufferance of beneficiaries, may pass under same clause, 376.
 but assets, which remain as such, will be ordered to be given up by assignees, 376.
 directed by testator to be employed in business, will pass on the bankruptcy of the executor carrying on the business, but no other part of the assets, 377.
 bankrupt executor sometimes allowed to prove against his own estate on a devastavit, 376, 377.
 executor, proof of debt by, 715.
 may prove against bankrupt co-executor without leave of court, 715.
 sole, proof by, allowed against his own estate, where, 716.
 by, for testator, 717.

EXPUNGING AND REDUCING PROOFS,

power to expunge under Act of 1849..706.
 under 6 Geo. 4, c. 16, s. 60..706.
 previously course was to petition Lord Chancellor, 706.
 expunging petitioning creditor's debt (Act of 1849, s. 83), 706.
 power, *semble*, only where debt "not justly due," 706.
 separate debt, "not justly due," under joint adjudication, 706.
 application to court in its general jurisdiction, in what cases made formerly, 706.
 cases of election by creditors taking bankrupt in execution, fraud, &c., 706.
 application now to court in its ordinary jurisdiction (sect. 12, Act of 1849; ss. 1 and 155, Act of 1861), 707.
 may be by single creditor, 707.
 may not be by bankrupt, unless decision will affect right to allowance or surplus, 707.
 where debt or any part paid before dividend, proof to be expunged or reduced, 708.
 dividend received to be refunded, 708.
 proof not expunged where creditor instituted process abroad, 708.
 but dividends in such case stayed, 708.
 nor because instrument, on which proof made, unstamped, 708.
 unless stamp essential to validity of instrument, 708.
 general rule: facts, grounds for disallowance, are grounds for expunging, 708.
 but proof in England, on bill, not expunged, in case in which proof entered abroad upon bankruptcy of firm comprising members of English firm, 709.
 proof become rightful, though originally wrongful, not expunged, 710.
 dividends received on proof before payment of debt by collateral security not refunded, 711.
 but generally expunging proof carries refunding of dividend, 711.
 unless after lapse of long period, 711.
 restoration of proof erroneously expunged, 711.
 application of official assignees alone to expunge, not sanctioned, 711.
 power of court to expunge claim not converted into proof, 711.
 where account referred and claim entered, motion to expunge claim refused, 711.

FACTOR,

goods, &c. in hands of bankrupt as, 364 et seq. See *Agent.*

FEME COVERT. See *Property in Right of Wife—Wife*.

FIRM,

liabilities of, allowance for payments made in discharge of, 684.

FIXTURES. See *Unregistered Bills of Sale—Order and Disposition*.

FOREIGN LANDS OF BANKRUPT,

in terms within the statute as to colonies, &c., 393.

real estate governed by *lex loci rei sitæ*, 393.

how far court can act *in personam* to compel bankrupt to convey his foreign lands, 393.

Cockerell v. Dickens remarked on, 394, 395.

where policy of foreign law is opposed to compelling conveyance, 395.

FORFEITURES AND PENALTIES,

petitioning creditor compounding with trader after bankruptcy, 439.

"creditors" means "creditors entitled to dividend," 439.

"property" means "property distributable under the bankruptcy," 439.

security taken for part of debt forfeits the whole, 440.

and is itself void, 440.

bill given to petitioning creditor, where no fiat has been prosecuted, not void, 440.

obtaining payment or security, ground for forfeiture, though uncertain whether person obtaining it will obtain more than other creditors or not, 440.

agreement by friend of debtor to pay creditor dividend, to induce him to sue out commission, was valid, 440.

payment of part of petitioning creditor's debt after fiat, without notice of fiat and without attempt on part of creditor to obtain preference, no forfeiture, 440.

creditor receiving debt and costs for the purpose of *supersedeas* with consent of only creditor who had proved, no forfeiture, 440.

abandoning commission and proceeding against bail who paid, no forfeiture, 441.

difference between former and present law, 441.

Belcher v. Samborne, remarks on, 441.

agreement that petitioning creditor's debt should stand over, he not executing composition deed, not void, 441.

if signature of petitioning creditor be no part of consideration for other creditors signing composition deed, their contract for further security or larger dividend to him, not fraudulent, 442.

contract to induce creditor to forbear opposition to discharge, void, 442.

such security, &c. may be recovered by assignees, 442.

penalty for obtaining money, &c. for such purpose, 442. See *Discharge, Order of*.

penalty on officers, &c. taking fees improperly, 443. See *Fees and Stamps*.

money forfeited, how to be sued for, 443.

application of forfeitures under Act of 1849..443.

apparent inconsistency between Acts of 1849 and of 1861..443.

suggested construction of combined enactments, 444. See *Fraudulent Preference and Crimes and Penalties*.

FORM, GENERAL,

of proceedings, written or printed on paper, &c., 52.

of petitions, orders and other proceedings regulated by General Order, 52.

of warrant and summons, 54.

want of, not to invalidate proceedings, 54.

FORMA PAUPERIS,

bankrupt may petition for annulment in, 795.

FRAUD,

if registration of deed under Act of 1861 obtained by, process may issue notwithstanding certificate, 1054.

in like case, assenting creditor may petition for adjudication, 1056. See *Arrangements with Creditors*.

FRAUDULENT CONVEYANCE,

act of bankruptcy, 106, 110, 135.

either within "realm or elsewhere," 110, 111.

"fraudulent," 111.

"conveyance," 111, 135.

"gift, delivery or transfer," 111, 135.

want of party to conveyance, 111, 120.

FRAUDULENT CONVEYANCE—*continued.*

- want of stamp, *Ex parte Potter, Re Barron* discussed, 111, 114.
 pocket deed, 114, 120.
 conveyance of *all* debtor's property, 114.
 exceptions: 1. where valid present consideration given, 114.
 2. where valid anterior obligation, 115, 122, 125.
 actual sale not, 115, 133.
 if no actual property passes as consideration then, *semble*, it is, &c., 115, 116, 119, 124, 125.
 mortgage, 116 et seq.
 fresh advance necessary to support, 116.
 if substantially to secure past debt only, then void, 117.
 assumption of liability not sufficient consideration, 117.
 older cases noticed, 117, 118.
semble, if money advanced by third person on guarantee of a friend of debtor, mortgage at the same time to friend for indemnity may be good, 118.
 advance must be available for general creditors, 119, 124, 125.
 benefit to debtor's estate must be of tangible character, 119, 120.
 conveyance of all debtor's property on trust for creditors, is, 120.
 but cannot be challenged by party or privy, 120.
 is so though for the benefit of the estate, 120, 121.
Spirett v. Willows, Ex parte Wensley and *Smith v. Timms* remarked on, 121, 130, 132.
 assignment for creditors not to be impeached after three months in certain cases, 121.
 further protection by sect. 192 of Act of 1861. See *Arrangements with Creditors*.
 marriage not sufficient consideration if wife cognizant of husband's affairs, 122.
 unless settlement be in pursuance of prior innocent contract of wife for it, 122.
 antecedent obligation, 122, 125.
 must not have been fraudulently contracted, 124.
Hutton v. Crutwell discussed, 124, 125.
 colourable exception of property from conveyance, 125, 130.
 if conveyance such as to stop business, 126.
 cases showing what has been held to be, 127 et seq.
 conveyance, if, when acted on, it will produce insolvency, fraudulent, 128.
Young v. Waud, 128, 129.
 assignment extending to all property, though debtor unaware of the fact, is an act of bankruptcy, 129, 130.
 colourable nature of exceptions, evidence of fraud, 130.
 if exception be substantial, onus shifted, 130.
 conveyance of part, if fraudulent, is, 130.
 "bona fides," 130.
 to be void, need not be *mero motu* of debtor, 132.
 otherwise, if impeached as fraudulent preference only, 132, 133.
 to impeach conveyance, necessary to prove facts whence fraud may be inferred, 133, 134.
 fraudulent intent question for jury, 134.
 conveyance cannot be impeached, if no person, who was a creditor when it was executed, continues to be so still, 134.
Oswald v. Thompson remarked on, 134, 135.
 if any such creditor exist, any creditor, though he have become so since, may impeach deed, 135.
 conveyance must be of nature to change property, 135.
 delivery to agent, not, 135. See *Fraudulent Preference—Conveyance made by Bankrupt*.
 when insolvent without consideration, 437 et seq. See *Voluntary Conveyance*.

FRAUDULENT EXTENTS IN AID,

- court may proceed where debtor by fraud makes himself accountant to the crown, 427.

FRAUDULENT PREFERENCE, 132—133.

- bonds sent to indemnify creditor, who had been defrauded, held to be, though bankrupts while solvent, had marked bonds with creditor's name unknown to him, 381.

FRAUDULENT PREFERENCE—*continued.*

whether return of goods to vendors on eve of bankruptcy of purchaser, is, 389. See

Goods returned—Property taken in Execution, 405.

not protected transaction, 412.

none of crown possible, *semble*, 417.

nature of, 428.

knowledge or privity of creditor immaterial, 428.

contemplation of probable insolvency not, per se, contemplation of bankruptcy, 428.

contemplation of bankruptcy, what is, 428—429.

if bankrupt knew that bankruptcy was inevitable, voluntary security or payment is, 429.

fraudulent preference or not, is question for jury, 429.

anything that rebuts intention of benefiting one creditor to the exclusion of others, is evidence against, 429.

payment, made in ordinary course, is not, 430.

retiring bill, unless in contemplation of bankruptcy with intent, &c., is not, 430.

redeeming mortgage of wife's lands, *Marshall v. Lamb* remarked on, 430.

where one creditor obtains payment by reason of attempt to prefer another, this is not a preference of the former, 430.

pressure of any kind will prevent payment being, 430—431.

request for payment, even of a bill not due, will make its retirement good, 431.

taking up of forged acceptances, *proprio motu*, out of fear of criminal proceedings not threatened, is, 431.

giving up goods claimed under alleged right to stop *in transitu*, after taking legal advice, is not, 431.

precedent duty rebuts fraudulent intent, 431.

the belief of obligation, even though unfounded, rebuts fraudulent intent, 431.

semble, duty should be specific as to property given up, 431—432.

trustees restoring trust property fraudulently misappropriated, 431—432.

form of transaction immaterial if there be in fact a fraudulent preference, 434.

cases analogous to fraudulent preference, where payments made after bankruptcy, 434.

cases commonly treated as fraudulent preferences discussed, 434, 435, 436.

fraudulent preference gives title to person preferred, unless set aside by assignees, 436.

trover commenced by assignees not conclusive election by them to avoid gift, 436.

fraudulent deed made before declaration of insolvency may be impeached under adjudication on creditors' petition, 436.

or on debtor's petition if there was a debt capable of supporting a creditors' adjudication, 436.

semble, even although not, if it was a fraudulent preference in contemplation of bankruptcy, 436.

deed impeachable where creditors obtained fiat, 437.

"preference" in colonial act interpreted "fraudulent preference," 437.

conveyance by bankrupt when insolvent, 437.

"conveyance," a transfer by legal instrument, 438.

mortgage not voluntary, securing bankrupt's son's debt to mortgagee, 438.

stock within statute 1 Jac. 1, c. 15.. 438.

voluntary settlement on wife voidable, 438.

payment off of mortgage on wife's property, voidable, 438.

second marriage in England no consideration, where prior marriage in Scotland valid, 439.

penalty where petitioning creditor compounds after bankruptcy with trader, 439.

meaning of "creditor" and "property," Act of 1849, sect. 268.. 439.

security for part forfeits whole debt, and security void, 440.

obtaining security, although no benefit to creditor, a forfeiture, *semble*, 440.

acceptance given, not void, where fiat not prosecuted, 440.

undertaking by friend of debtor to pay creditor part of debt, 440.

payment of debt and costs to petitioning creditor with consent of creditors, 441.

agreement that petitioning creditor's debt should stand over, 441.

contract for further security or other benefit to petitioning creditor allowed, where, 442.

contract or security for forbearing opposition to discharge, fraudulent, 442.

such security, &c. recoverable by assignees, 442.

obtaining money, &c. for forbearing opposition, 442.

officers obtaining fees improperly, 443. See *Crimes and Penalties*.

FRAUDULENT WARRANTS OF ATTORNEY, &c.,

certain warrants, &c., cognovits and consents to judge's order given within two months of filing petition, to be null and void, 420.

warrant, given to secure outgoing partner's share of capital on a dissolution, is not given for an antecedent debt, 420.

all proceedings founded on fraudulent warrants fall with it, 420.

Young v. Billiter, 421.

warrants under 59th and 60th sections of 1 & 2 Vict. c. 110, voidable, not void, 421.

warrants, &c., cognovits given by trader void, unless filed and registered within twenty-one days, 421.

warrant, &c. nevertheless good against debtor, 422.

cognovit not filed, &c., though given in adverse action, bad, and every proceeding on it bad also, 422.

neglect to register discharges surety, 422.

charging affidavit on Irish judgment not invalid, though the judgment was on warrant which became void for want of registration, 422—423.

Ex parte Collins, 424.

section holds, though petitioning creditor's debt contracted after the twenty-one days had expired, 423.

twenty-one days reckoned exclusive of first day, 423.

mode of filing, &c., 423.

nature of affidavit on filing, 423.

attorney for plaintiff cannot act for defendant in attesting execution of warrant, 424.

FRIENDLY SOCIETY, &c.,

money belonging to, in hands of bankrupt officer payable in full, 552.

assignees of bankrupt officer to deliver over property, &c. to person appointed, 553.

registrar to direct accountant-general or officer of bank of England, &c. to transfer stock to new trustees, &c., 553.

this preference allowed only where bankrupt was officer, 553.

resolution that treasurer should pay interest on part of funds did not make them a loan to him in his private character, 553—554.

treasurer paid himself debt due to him out of monies of society, and transferred to them an insufficient security held by him for it, on his bankruptcy money was held within clause (sect. 167, Act of 1849), 554.

"employment" means as officer, 554.

treasurer of benefit building society not within clause, 554.

assignees of bankrupt officer of savings bank, &c. to deliver and pay property and monies to person appointed, 555.

on joint adjudication against treasurer and others, claim for priority under these enactments only allowed against separate estate, 555.

money paid into firm, of which treasurer was member, to credit of trustees of savings bank, payable in full on bankruptcy of firm, 555.

enactment applies to such savings banks as have conformed to 9 Geo. 4, c. 92.. 556.

certificate of the barrister not conclusive that rules are conformable to statute, 556.

breach of rules of society for securing the property of society may deprive it of priority by raising a case that monies were not received by officers *virtute officii*, 556.

money belonging to local paving board has priority over any debt but those due to the crown, 556.

person may be treasurer by construction, though not formally appointed such, 556.

money includes proceeds of sale of exchequer bills, 557.

money received by bankrupt as agent or trustee of, primarily payable, 365, 366.

GAOL,

registrar's duty of delivery, 22.

notice to keeper of, &c., 23.

county court orders and forms relating to delivery of, 23.

prisoner refusing to conform may be imprisoned in common gaol, 24.

county court forms as to where prisoner refuses to conform, 24.

gaolers' returns to be assigned by chief registrar to registrars in rotation, 26.

GENERAL ORDERS,

- how framed, 52.
- for what purposes, 52.
- former powers to make, 52.
- may be varied, 53.
- in county courts, 56.
- as to fees and costs, 52.
- may be varied, 57.

GOODS RETURNED OR REPUDIATED,

- whether return of goods by bankrupt on eve of bankruptcy to vendors is fraudulent preference, 389.
- while anything is executory in contract of sale bankrupt may return goods, 389.
- where no valid contract in writing under statute of frauds, bankrupt may return goods, 389—390.
- consent of general body of creditors or pressure by particular creditor will prevent fraudulent preference in returning goods, 390.
- Graaf v. Greffuhl* remarked on, 390.
- property, of which possession has been fraudulently obtained, may be returned, 391.
- if fraud be not of such a kind as to prevent the property passing in the goods they cannot be returned, 391—392.
- cases where *transitus* is complete, rest on the ground of mutual rescission, 392.
- vendor may disable the bankrupt from rescinding by his own act, 392.
- vendor may at the instance of bankrupt exercise right of stoppage, and such instance is not fraudulent preference, 392.
- goods specifically allocated may be applied to their purpose without fraudulent preference, 392.

GOODWILL, SALE OF, 521. See *Assets, Discovery, &c. of.*

HABEAS CORPUS, 490, 494.

HALF PAY. See *Assets, Discovery, &c. of.*

HIGH BAILIFF OF COUNTY COURT,

- to act as messenger, 48. See *Messenger.*

IMPOUNDING. See *Annulling—Transfer, &c., of Proceedings—Adjudication, Procedure to obtain.*

INCORPORATION OF ADJUDICATION,

- distinguishable from "consolidation of estates," 688.

INDIA,

- adjudication against traders in India and elsewhere, 975 et seq.

INEQUALITY. See *Arrangements with Creditors*, 1004 et seq., 1059, 1060.

INJUNCTION,

- semble*, court cannot grant, against creditor from proceeding at law, 71.

INROLMENT OFFICE, 50.

- entry of record of proceedings not already so entered, 50, 51.
- clerk of inrolments had care of records, 50.
- clerk of inrolments abolished, and documents transferred to chief registrar's office, 51.
- order by Lord Chancellor to produce proceedings pending at passing of Act of 1849, in order to inrol, 51.

INSOLVENT DEBTORS' COURT,

- account, 38, 39.
- jurisdiction of, given to court of bankruptcy as to pending matters, 8, 65 et seq., 68.
- abolished, 65.
- officers of, transferred to court of bankruptcy, 30, 65.
- their tenure of office, 65.
- vacancies not to be filled, 66.
- benefits given to them by 4 & 5 Will. 4, c. 24, preserved, 66.
- chief clerk to make return to Lord Chancellor of pending business, 66.
- Lord Chancellor to give orders as to pending business, 66.
- what is pending business in, 66.
- power of, for winding up summarily pending business, 66.

INSOLVENT DEBTORS' COURT—*continued.*

recognizances of sureties for appearance of insolvents extended, 67.
salaries of commissioners and officers, 67.
monies voted by parliament for use of, to be paid to chief registrar's account, 67.
jurisdiction of, under "Small Debts' Act," transferred, 73.

INSOLVENT COURT,

Portugal-street. See *Buildings.*

INSPECTOR,

his office, nature of, 661.
costs of his appointment, in discretion of court, 662.
out of which estate payable, joint or separate, 662.
election of, cancelled, when, 662.

INSTITUTION OF COURT. See *Court of Bankruptcy—Court of Review—Commissioners.*

INTENT TO DEFEAT, DELAY, &c., CREDITORS. See *Act of Bankruptcy.*

INTEREST,

to be debt for purposes of petition under Act of 1861..180.
not petitioning creditor's debt without 97th sect. of Act of 1861..186.
rebate of, not to be allowed on debt payable in futuro in estimating petitioning creditor's debt, 192.
nor in making proof, 192.
but only in paying dividends, 192.
creditors entitled to, if assets sufficient to pay 20s. in 1*l.*, 933.

INTERLOCUTORY APPLICATIONS, PRACTICE ON,

applications to court made by motion supported by affidavits, 737.
court may make order nisi, 737.
order nisi, how served, 737.
applications to court to be by petition, where subject matter complicated, &c., 737.
service of notice of motion or of rule, 737.
petition not needed to remove assignee, 738.
appeals, formerly, usually by petition, 738.
now by motion, 738.
no new evidence on, unless of what took place in court below, 738.
application to annul on grounds other than legal invalidity to be by petition, 738.
to amend certificate of taxation of costs, now by motion, *quære*, 738, 739.
stranger if interested may petition in the bankruptcy, 739.
official assignee should not petition alone, except under special circumstances, 739.
bankrupt, the creditors or their assignees, whether they have proved or not, may apply by petition or motion, 739.
bankrupt alone, without joining with creditors, not encouraged to apply as to estate or conduct of assignee, 739.
bankrupt may petition in *formâ pauperis*, 739.
creditor disputing adjudication cannot petition against assignees as such, 739.
as to parties to petition to annul. See *Annulling Adjudication.*
time for petitioning, 739.
petition, form and contents of, 739.
how entitled, 740.
what parties may and may not join in, 740.
all persons affected by order prayed by, to be served, 740, 747.
should show petitioner's interest, 740.
and reasons of commissioner's decision when appealed from, 740, 741.
what it should contain, 741.
practice as to amending, 741.
not to be multifarious, 741.
may be framed in alternative, 741.
multifariousness in, what, what not, 742.
statement in, not to be irrelevant to prayer, 742.
should contain specific allegations, 742.
prayer of, to be specific, 742.
practice as to amending *instantly*, 743.
prayer of, on appeal, not to be wider than of original petition, 743.
costs, in case of improper charges in, 743.
affidavits or motions, same principles, as to contents, &c. of, apply to, as to petitions, 743.

INTERLOCUTORY APPLICATIONS, PRACTICE ON—*continued.*

- signing and attesting of petition, 743.
- petition to be signed by petitioner (G. O., 19th Oct. 1852, r. 21)..743.
 - and attested by solicitor presenting petition, 743.
- form of attestation, 743.
- rule 21, G. O., 19th October, 1852, when only dispensed with, 743.
- "authentication" of petition or petitioner's signature, not sufficient, 744.
- attestation, what sufficient, 744.
 - none required of petition of solicitor in person, 745.
 - nor of bankrupt appearing personally in support, 745.
 - to marksman's petition, what it should state, 745.
- petition of several may be heard, though signed by one only, 745.
- amendment of proceedings what allowable, and on what terms, 746.
- presenting petition, 746.
- petition, engrossment and filing of, 746.
 - supplemental, 746.
 - and by way of revivor, 746.
 - to annul, how dismissed in case of delay, 746.
- deposit of costs, on appeal, Act of 1849. s. 12..747.
 - amount of, G. O., 19th October, 1852, r. 29..747.
 - in case of applications for recall of certificate, &c., 747.
- notice of motion, how served, 747, 751.
 - waiver of, 747.
- petition, how served, 747.
 - where presented by some only of the directors of a railway company, 747.
- on appeal, 748.
- to annul fiat or to dismiss petition for adjudication, 748.
- assignees must all join in, or others must be served, 748.
- to set aside sale, 749.
- to tax solicitor's bill, 749.
- to surcharge and falsify accounts of assignees, 749.
- to set aside purchases by assignee, 749.
- for payment of dividend, 749.
- to refer affidavit for scandal, 749.
- necessity for personal service of, on bankrupt, not waived, where, 749, 750.
- dispensed with by court, when, in case of bankrupt, 750.
 - in case of petitioning creditor, 750.
 - of party proving debt, 750.
 - of assignees, 750.
- application to dispense with, should be prompt, 751.
- order for substitution of service of, 751.
- proof of service of, 751.
- where services of, not duly effected, no order made, 751.
- motion, though made *ex parte*, rule nisi may be made upon. See General Order, 19th October, 1852, rule 17..751.
- evidence on interlocutory applications, 751. See *Evidence—Affidavits.*
- the hearing, provisions as to, on motions and petitions. See General Order, 19th October, 1852, r. 26 et seq., 751.
 - applications for, to be entered with registrar, 752.
 - order of, on motions and petitions, 752.
 - when advanced, 752.
 - how postponed, 752.
 - or two heard together, 752.
 - application to postpone, on what terms granted, 752.
 - postponement to particular day, when made, 753.
 - when stayed, 753.
 - respondent not appearing at, what order made, 753.
 - applicant not appearing, 753.
 - affidavit of service required in such cases, 753.
- where objection of form overruled, case proceeded with on merits, 754.
- where objecting party unprepared to go into, costs of the day, 754.
- bankrupt not heard in answer on question of proof, 754.
 - possible exceptions, 754.
- petitioner's privilege from arrest, while attending hearing, 754.
 - if wrongfully arrested, application for discharge, where made, 754, 755. See *Bankrupt—Protection.*
- registrar, certificate of, transferring matters to commissioner, 755. See *Registrar.*

INTERLOCUTORY APPLICATIONS, PRACTICE ON—*continued.*

- issues, court of appeal may direct trial of, Act of 1849, sect. 15..755.
 - power of commissioners to direct, *quære*, 755.
 - only directed in doubtful cases, 755.
 - when not directed, 756.
 - costs of, to try validity of adjudication, 756.
 - court, in order directing, states terms of, &c., 756.
 - during trial of, petition stands over, 756.
 - costs of, when advanced to bankrupt, 757.
 - no second directed, except under special circumstances, 757.
 - after trial of, petition set down upon further directions, 757.
- jury, as to commissioner's power to summon, *quære*, 36, 757.
 - For costs upon interlocutory applications, see Damages and Costs.*
- order of court on motion or petition, drawn up by registrar, 768.
 - if drawn up, not varied on motion, 768.
 - nor if made three months, though not drawn up, without rehearing petition, 768
 - money directed to be paid by, must be demanded personally, 769.
 - four-day, on affidavit of demand and non-payment, 769.
 - service of, where party absconds, 769.
 - motion for substituted service in such case, 769.
 - four-day neglected, attachment issues on motion, 769.
- attachment not issued in vacation, except in urgent cases, 770.
- party committed for contempt may petition for discharge, 770.
- orders, summary mode of enforcing, Act of 1861, sect. 226..770.
- sect. 226, Act of 1861, to what extent applied, 771.
- order of committal, 771.
- orders for payment of money and costs, and execution thereon, 772 et seq.
- order for payment of money admitted due to bankrupt's estate, to have effect of judgment, 772.
 - for payment of money and costs, to be signed by commissioner, &c., 773.
 - form and contents of, G. O., 19th October, 1852, r. 100..773.
 - writs of execution to enforce, to be sealed, &c., 773.
 - and to be returned to chief registrar and filed, 773.
 - For forms of writs, see Appendix.*
- rehearings, upon what facts or evidence allowed, 774.
 - mistaken allegations, no ground for, 774.
 - none for costs only, 774.
 - none of petition till costs paid, 774.
 - nor till hearing of former order drawn up, 774.
 - petition of, need not state grounds for rehearing, 775.
- new facts to be put in supplemental petition, 774.
 - (*See further as to rehearing of appeals, 808 et seq.*)

INTERPRETATION OF TERMS. See Interpretation Clause, 1105 et seq.
 interpretation clause of Act of 1861 applies to Act of 1849, *semble*, 1107.

IRELAND,

- adjudication must be prosecuted in, in case of Irish trader, though act of bankruptcy committed in England, 98.

ISSUES OF FACT,

- court of appeal may try by jury, 63, 64.
- court of appeal may direct to court of common law, 64.
- where motion for new trial should be heard, 64.
- quære*, power of court in its primary jurisdiction to direct, 69, 70.
 - or to try by jury, 69, 70.

JOINT ASSETS,

- aliened by bankrupt after bankruptcy, assignees may recover, 684.

JOINT DEBT,

- out of what, payable, 656.
- how converted into separate, 664. See *Adjudications, Joint and Separate, Proof under.*

JUDGE'S ORDER BY CONSENT, NOT FILED WITHIN TWENTY-ONE DAYS, &c.,

- judge's order to enter up judgment, obtained by consent from any trader defendant, void unless filed and registered within twenty-one days, &c., 424.
- clause (sect. 137, Act of 1849,) invalidates order only against creditors and assignees, 425.

JUDGMENTS,

- order invalid notwithstanding that all prior proceedings have been hostile, 425.
- judgment entered up before 1860 a charge on lands, sect. 13, 1 & 2 Vict. c. 110.. 540.
- but the charge not to be levied nor to give priority in bankruptcy until a year after entering up, 541.
- proviso protecting former purchasers, mortgagees and creditors, 541.
- registration of judgment, 541.
- position of judgment creditor duly registered under statute, 542.
- lien extends to subsequently-acquired lands, 542.
- whether judgment creditor, having registered, may seize lands of debtor who has had discharge in bankruptcy, *quære*, 542.
- lien, *semble*, discharged by certificate, 543.
- judgment, &c., entered up after 23 & 24 Vict. c. 38, to affect no land as to *bonâ fide* purchasers until writ of execution sued out, 543.
- no writ of execution on judgments entered up after that act to bind lands as to *bonâ fide* purchaser, &c., unless executed within three months from registration, 543.
- qualification as to *bonâ fide* purchaser, &c. abolished by 27 & 28 Vict. c. 112..543.
- As to position of judgment creditor holding registered judgment, see Creditors holding Securities.*
- judgment creditor, having taken debtor in execution, put to his election on tendering proof, 544.
- orders of court of bankruptcy have force of, as to lands, on registration, 1104.
- judgments bind assignees under former acts, 275.
- as to registering judgments in register counties, 275.
- judgments under 23 & 24 Vict. c. 38..276.
- whether assignees in bankruptcy "purchasers," 276.
- judgments under 27 & 28 Vict. c. 112..277.

JUDGMENT DEBTOR SUMMONS,

- acts of bankruptcy for which substituted, 149.
- who may sue out, and when, 149, 150.
- on decree in equity, or order in bankruptcy, insolvency or lunacy, 150.
- court out of which to issue, 150.
- service of, 150, 151, 159.
- duplicate of, to be given to sheriff, &c., where debtor in custody, 150.
- procedure on appearance of debtor, 151.
- adjudication on failure to pay, &c., 151, 154.
- time to show cause against, 151, 154.
- when absolute, 151.
- stamp duty, 151.
- debtor refusing to submit and answer, &c., committed, 152.
- debtor having privilege of parliament not subject to, under 76th section, 152.
- otherwise under 77th section, 152.
- and under the old clauses, 152, 155.
- no limit of amount under 77th section, 152.
- limit in 89th only refers to petition, 152.
- judgment for costs, as on nonsuit, will not support, 153.
- otherwise as to order for costs under section 77..153.
- must be in respect of debt contracted since the passing of the act, 153. See *Petitioning Creditor's Debt*.
- affidavit in support of, 153.
- form of, 153.
- indorsement on, 153.
- examination of debtor should be confined to his ability to satisfy debt, 153, 154.
- "may," in 83rd section, means "must," 154.
- quære*, right of debtor to cross-examine creditor on his affidavit, 154.
- where judgment set aside, adjudication annulled, 154.
- difference between mode of procedure under, and under summons, to trader having privilege, &c., 155.

JURISDICTION,

- ancient in bankruptcy, 6.
- of court of bankruptcy, 8, 67 et seq.
- of commissioners. See *Commissioners*.
- transfer of. See *Transfer*.
- of county courts under Act of 1861..56. See *County Courts*.
- of court of review transferred to vice-chancellor, 60. See *Appeal*.

JURISDICTION—*continued.*

- of court of appeal. See *Appeal*.
- of insolvent court transferred to court of bankruptcy, 8, 65 et seq., 68, 73.
- Court of Bankruptcy to have, of court of record and of superior courts, 67, 68.
- as well as of Insolvent Court, 68.
- to rehear, 68, 164.
- to detain on warrant for costs, 68, 69.
- to direct issues or try by jury, 69, 70.
- to grant *habeas corpus*, 70.
- primary, of court, defined, 70.
- none to grant injunction against creditor proceeding at law, 71.
- nor to administer assets acquired by trading with leave of assignees by an uncertificated bankrupt, 71.
- nor fund paid in as assets by bankrupt executor, 71.
- nor to take cognizance of breach of trust by bankrupt trustee, 71.
- nor to determine priorities among persons claiming adversely to bankruptcy, 71.
- nor to enforce completion of purchase of bankrupt's assets made under order of the court for sale, 71, 72.
- quære*, to compel on petition the refunding by petitioning creditor of money corruptly received to quash petition, 72.
- may compel specific delivery of chattels by assignees, 72.
- none to make order against stranger not submitting, 72.
- of Irish court over Irish bankrupts exclusive, 92, 96.
- court of appeal slow to exercise, in interfering with decision of primary court in matter of discretion, 163.
- quære*, to dismiss trader debtor summons, where debtor has failed to appear, 167.
- on trader debtor summons. See *Trader Debtor Summons*.
- English court of bankruptcy has none over trader resident in Ireland, 778.
- conferred by residence for six months (Act of 1861), 778.
- foreign and English, 778.
- objection to prior bankruptcy without certificate, 778.
- of court, and rights, &c. of parties, after registration of deed of arrangement, 1033 et seq.
- of court of bankruptcy to order discharge of debtor arrested after protection granted, considered, 1047 et seq.

JURY,

- court of appeal may try questions of fact by, 63, 64.
- quære*, whether court of primary resort can try question of fact by, 69, 70.

JUST ALLOWANCES, 1071 et seq. See *Costs*.

KEEPING HOUSE. See *Act of Bankruptcy*.

LANDS SUBJECT TO RENTS, &c.

- assignees accepting property of bankrupt subject to rent, &c., take it *cum onere*, 287.
- but may refuse to accept it, 287.
- semble*, their acceptance is presumed *prima facie*, 287.
- bankrupt formerly remained liable if the assignees did not accept, and even though they did so if he were lessee and not merely assignee, 287.
- bankrupt not now liable, if assignees elect to take, 287.
- if they decline the bankrupt, giving up lease and possession within fourteen days after notice of their refusal, ceases to be liable, 288.
- assignees may be summoned to elect by any person having interest in land or rent, 288.
- former similar enactments confined to cases of landlord and tenant, 288.
- whether present act extends to discharge lessee where his assignee has become bankrupt and has delivered up lease, *quære*, 289.
- goods of stranger, upon the lands held by the bankrupt, distrained after assignees have declined to accept, 289.
- assignees may assign to pauper after accepting and so get rid of liability, 290.
- have been held liable while holding lands on covenants for rent which did not strictly run with the land, *quære tamen*, 290.
- have been ordered to give up to landlord bankrupt's interest in agreement for lease equitably mortgaged, 290.
- no such order, *semble*, could be made against consent of landlord, 290.
- lease from year to year and parol agreement for lease, 291.

LANDS SUBJECT TO RENTS, &c. — *continued.*

- omission of word "assignees" in agreement for tenancy does not make it personal only so as not to pass to assignees, 291.
- agreement by person not owner of the land to procure a lease is within section, such person may compel assignees to elect, 291.
- lease, till election, formerly held to be in bankrupt, 291.
- semble*, otherwise now, 291.
- no election possible till after choice of assignees, 291.
- lease being bad is no reason for refusing to elect, though it may be for refusing to give up possession, 291, 292.
- assignees may elect in *pais* constructively, 292.
- cases showing what is election, 292, 293.
- acceptance under a new contract, 293.
- election should be within reasonable time or assignees may be made liable for the delay, 294.
- or may be held to have elected, 294.
- assignees could not formerly elect for a time only, 294.
- now may elect to hold to some quarter day not more than six months from adjudication, 294.
- meaning of "conditions, &c.," 294.
- covenant to restore buildings at end of tenancy altered during tenancy not, 294.
- covenant to repurchase fixtures not binding on landlord, if assignees decline lease and bankrupt gives it up, 295.
- refusal of assignees to accept deemed in older cases a determination of lease so as to enable assignees to take away growing crops, 295.
- landlord may treat delivery up of lease as surrender, 295.
- Maples v. Pepper* harmonized with these cases, 295, 296.
- buildings erected under agreement to deduct amount expended from rent, no lien in favour of assignees for money spent if they decline lease, 296.
- landlord becoming assignee of bankrupt, tenant cannot determine lease for his own benefit, 296.
- equitable mortgagee of lease may compel election by assignees, 296.
- mortgagor of reversion also, 296.
- jurisdiction is only to order election and delivery, &c., not to entertain collateral matters, 296.
- formerly no right to order costs of application, 296.
- but if securities for performance of covenants are ordered to be given up, an inquiry will be had what is due on them, 296.
- deposit on purchase not forfeited by assignees repudiating contract, 297.
- surety for the bankrupt liable though the bankrupt discharged, 297.
- assignees not to crop, but as the bankrupt might have done, 297.
- sect. 144, Act of 1849, applies to express covenants as well as custom of the country, 297.
- held formerly that covenant to renew could not be enforced by assignees of lessee, 298.
- assignees entitled to enforce agreement for lease, 298.
- court of chancery may enforce equitable conditions, 299.
- assignees cannot be compelled specifically to perform agreement of the bankrupt to take lease, 299.
- contract to lease to bankrupt not enforceable by assignees, if consideration personal to bankrupt, 299.

LIBERTY TO APPLY,

- implied, if not expressed, in order for adjournment *sine die*, 961.

LICENCE,

- uncertificated bankrupt trading with, 254.

LIEN. See *Costs*.

- of partner on property of firm, or of other partner, 684 et seq.
- property of bankrupt, subject to, passes to assignees subject also to lien, 314, 315, 320.
- liens divided, 320.
- retaining lien, what, 320.
- charging lien, what, 320.
- general lien, what, 320.
- particular lien, what, 320.
- presumption against general liens, 320.

LIEN—*continued.*

- liens by express contract or course of dealing, 321, 336.
- general, not implied unless of necessity, and then limited as narrowly as implication will allow, 321.
- particular liens readily implied from course of dealing, 321.
- general liens by custom, 321.
- customary lien limited to matters coming to hands of creditor in the way of his business, 321.
- banker's general lien rebutted by contract for particular lien, 322.
- or by special purpose of deposit, 322.
- may extend to property not belonging to customer, if by consent of owner customer allowed to place it in the hands of the bankers, as if it did belong to him, 322.
- semble*, extends to indemnify banker against liabilities incurred by him on account of customers on bills, &c. not yet due, 322.
- modification of this lien on bankruptcy of banker, 322.
- in other trades in general a wider lien cannot be conferred impliedly by custom by any one, than he himself has against the owner of the goods, 323.
- unless authority has been given for the purpose, 323.
- not even under Factors' Act, 323.
- attorney's lien need not be proved by evidence, 323.
- nor banker's, 324.
- factor's lien, a charge as well as a retaining lien, 324.
- similar rights by contract, 324.
- quare*, whether factor's lien extends to indemnify him against liability incurred for principal, but not yet due, 325.
- policy broker's lien general, even against policies effected for an unknown principal by an agent, 325, 326.
- if agency is known, then lien particular only, 326.
- unless agent has lien against his principal, which the broker is entitled to avail himself of, 326.
- broker may have constructive notice that his customer is agent only, 326.
- attorney's lien, &c., 326.
- no lien now on account books in bankruptcy against assignees, 326.
- lien in other respects unchanged, 327.
- only in respect of business done as attorney, &c., 328.
- if assignees continue the bankrupt's attorney in their employ, they must confirm his lien for his costs in that matter, 328.
- no lien will arise for attorney who knows of act of bankruptcy for any business done for bankrupt afterwards, without sanction of the assignees or their recognition, 328.
- costs of trust deed cannot be claimed against assignees, 328.
- quare*, as to lien in favour of accountants, &c., 329.
- as to lien of carrier against his customer, general or particular, 329.
- against other persons, particular only, 329.
- where employer has general lien against owner of goods, and carrier general lien against employer, whether carrier can thus claim derivative lien against owner, *quare*, 329.
- lien for freight, 329.
- quare*, for disbursements by part owner, 330.
- other liens miscellaneous, 330.
- retaining lien lost if possession lost, 330, 331.
- printer has lien, for balance due on an entire work, upon numbers in his hands, 331.
- general rule as to circumstances under which retaining lien arises, 331.
- retaining lien, lost by loss of possession, does not revive on resumption of possession, 331, 338.
- vendor's lien for unpaid purchase-money, 331.
- seamen's lien for wages, 332.
- as to master of ship, 332.
- shipowner's lien on cargo for freight, 333.
- salvor's lien, 333.
- possession wrongfully obtained cannot be retained on claim of lien, 333.
- given for a purpose cannot be retained on a claim of lien except in accordance with original purpose, 334.
- Humphries v. Wilson* canvassed, 334.
- contract for particular mode or time of payment may discharge a lien, 335.

LIEN—continued.

- contract may create a lien where none would otherwise arise, 336.
- goods must have been in bankrupt's possession before the act of bankruptcy to give retaining lien against assignees, 338.
- retaining lien does not revive if once lost, but where lien is general, then on recovery of possession goods fall again under lien, 338.
- quære*, whether lien, lost by giving a bill, revives on dishonour of bill, 338.
- to give charging lien against assignees, title to goods must have been in bankrupt when lien given, but he need not have had possession, 838.
- waiver of lien, 339.
 - by proof of debt, 339.
- lien can only be claimed against true owner by reason of his own act or that of an agent acting under his authority, actual or constructive, 339.
- lien, effected by person having limited interest, determines with his interest, 339.
- pawnee claiming through factor, 339, 340.
- pawnbroker, 340.
- vendor's lien not lost by his receiving rent from purchaser for warehousing the goods, nor by acknowledging in writing that they are the property of the purchaser, 356. See *Stoppage in Transitu*.
- where part of goods, &c. subject to lien delivered, it remains as to residue, 357.
- money brought into court, subject to, *semble*, 630.
- petitioning creditor and assignees have, for costs, 1074.
 - but must apply to court to enforce, 1074.

LIMIT OF ACT OF 1861,

- Act of 1861 not to extend to Scotland or Ireland, except where expressly provided (sect. 231, Act of 1861), 1109.
- Act of 1849, sect. 3, is to same effect as sect. 231, Act of 1861..1109.
- Act of 1849 held not to extend to colony of New Zealand, 1109.

LIMITATIONS, STATUTE OF,

- whether debt barred by, may be petitioning creditor's debt, 181.
- whether provable, 533, 534. See *Proof of Debt*.

LIQUIDATORS,

- under Companies' Act, 1862, proof by, for debts, 615.

LOCAL PAVING BOARD,

- treasurer, becoming bankrupt, debt due by as such, primarily payable, 367.

LUNATIC PRISONERS FOR DEBT,

- adjudication in case of, 233.
- form of petition on behalf of, 234.
- power of justice to remove to county asylum, 234.
- no provision for costs of removal, 234.

LYING IN PRISON. See *Act of Bankruptcy*.**MAJORITY OF CREDITORS,**

- two are, within sect. 192 (Act of 1861), where two only, 1028.
- in estimating number and value of, securities held are not excluded. See *Arrangements with Creditors*.

MALACCA,

- adjudication against traders in, 975 et seq.

MANAGER,

- creditors at meeting may appoint, 521.

MANAGER, OFFICIAL,

- under winding-up acts, proof by, for call, 685.

MARRIED WOMAN. See *Wife*.**MEETINGS OF CREDITORS,**

- creditors, meetings of, may be held under registrar, sects. 52 and 58, Act of 1861 ..895.
- registrar presiding has powers of commissioner, except as to committal, 896.
- meeting of creditors to be held on notice in Gazette (after adjudication absolute), and proofs to be received, sect. 109, Act of 1861..895.
- at such meeting registrar or "such other person" as court shall appoint, presides, 895, 896.
- "such other person," *semble*, can only receive proof tendered, 896.

MEETINGS OF CREDITORS—*continued.*

- application, to hold first meeting elsewhere than where court usually sits, to be made to commissioner, 896.
- creditors may by letters of attorney appoint official assignee or other person to represent them, 896.
- first meeting to be fourteen days after adjudication, or as court or registrar directs, 896.
- official assignee to give at first meeting full information as to estate, debts, &c., 896.
- majority in number and value of creditors may resolve to transfer proceedings to county court district, 897.
- majority in value of creditors to determine bankrupt's allowance, 897.
- commissioner may under sect. 194, Act of 1849, fix allowance, if creditors fail to do so, 897.
- for estimating majority in value, creditors joint and separate included, 897.
- and, *semble*, separate as well as joint, of members of bankrupt firm, 897.
- majority in value at meeting may accept bankrupt's proposal or resolve to stay proceedings, sect. 110, Act of 1861..897.
- but meeting to be adjourned fourteen days and notice given to every creditor, 897.
- three-fourths in value at adjourned meeting may suspend proceedings, 897, 898.
- provision not made by sect. 110, as to mode of winding-up bankrupt's affairs, 898.
- although proceedings suspended, bankrupt may be outlawed, 898.
- creditors' assignee appointed at first meeting, sect. 116, Act of 1861..898.
- security to be given by bankrupt, its amount, &c., decided by majority in value of creditors at first meeting, 898.
- appointment of manager under creditors' assignee to collect and wind up estate, 898.
- creditors' assignee and manager may be removed, 898.
- seven days' notice of new choice to be given, 899.
- three-fourths in value of creditors at meeting may decide to raise money for bankrupt's debts by mortgage, &c., of assets, 899.
- court determines questions between assignees and creditors, but has regard to resolutions of latter, 899.
- in case of inconsistent resolutions, *semble*, court may exercise its discretion, 899.

MEMBERS OF PARLIAMENT,

- not to sit or vote, if declared bankrupt, unless debts paid, 941, 942.

MERGER,

- change of character of debt by, 666. See *Adjudications, Joint and Separate, Proof under*, 666 et seq.

MESSENGERS,

- appointment, 43.
- some vacancies not to be filled, 43.
- former, continued, 43.
- to give security and to be subject to dismissal by Lord Chancellor for cause, 43.
- vacancies to be filled by Lord Chancellor, 43.
- nature of security to be given by, 43.
- remuneration of, 43, 44.
- surplus fees to be paid to chief registrar's account, 27, 44.
- fees of, 44.
- to account to official assignees for fees, &c., 44.
- to account quarterly to chief registrar, 44.
- to account yearly also and pay balance to chief registrar's account, 44.
- official assignee to act by, in taking possession, 44.
- to make inventory where wanted, 45.
- indemnified against action where acting on warrant, 45.
- petitioning creditor liable instead of, 45.
- not protected unless actually acting within warrant, 46.
- disqualified from parochial office, 46.
- general duties, 46. See *Warrant*.
- in seizing goods, should satisfy lien of holder, 47, 48.
- penalties for obstructing, 48.
- high bailiff of county court to act as, 48.
- to make returns to chief registrar of business, 48.
- includes assistant, 48.

MISDEMEANORS. See *Crimes and Penalties*, 1092 et seq.

MISDESCRIPTION OF BANKRUPT,
ground for annulling adjudication, 784.

MONIES. See *Accountant in Bankruptcy*.

MORTGAGE,
partner giving, for joint debt does not make it separate, 679. See *Act of Bankruptcy*
—*Fraudulent Conveyance*.

MORTGAGE DEED,
mortgagee may be compelled to produce for discovery, &c., of assets, 496. See
Assets, Discovery, &c., of.

MORTGAGES,
conditional estate or mortgage granted by bankrupt may be redeemed by assignees,
273.
even before day of redemption limited, 273.
equitable mortgages are within clause, sect. 149, Act of 1849..273.
precautions necessary as to chattels, 273. See *Order and Disposition*.
mortgage redeemed before it is absolute at law, legal estate vests in assignees, 274.
duty binding bankrupt in respect of property binds assignees, if covenant for fur-
ther assurance, 274.
mortgagee's equity to consolidate mortgages binds assignees of mortgagor, 274.
mortgage of ship defectively registered, not aided formerly, 274.
effect of Merchant Shipping Acts, 1854 and 1862..275.

MUTUAL DEBTS AND CREDITS, PROOF IN CASE OF,
mutual debts and credits, set-off for, notwithstanding prior act of bankruptcy,
612.
former law in respect of, 612.
mode of ascertaining balance due upon, 613.
what debts may be set off by bankrupt against creditor, 613.
balance to be struck as at filing of petition, 614.
debts not to be assigned after notice of bankruptcy, for purpose of set-off, 614.
notice must be of bankruptcy of bankrupt, 614.
debts due, but not payable, may be set off, 614, 615.
accepting bill for accommodation is a giving credit, 615.
banker accepting bill for customer and receiving money of, after act of bankruptcy,
no case for set-off, 615.
costs, untaxed at date of bankruptcy, no set-off in respect of formerly, 615.
such costs now provable and may be set off, 615.
no set-off, unless cross demand shown to be due before notice of bankruptcy, 616.
set-off allowed, where bankrupt surety paid after bankruptcy guaranteed debt for
creditor guaranteed, 616.
where accommodation acceptor after bankruptcy takes up acceptance, 618.
as against indorsers, where indorsees hold bills still current, 618.
accommodation bill held by bankrupts, who accepted for accommodation of
drawer, applied in reduction of debt to drawer, 618.
set-off not allowed to drawers of bills for value, against indorsees not taken up by
drawers, 619.
liability of partner to pay debts of firm, no ground for, against claim for
balance due on dissolution, 619.
money account not necessary to mutual credit for set-off, 619.
mutual credits must be of nature to eventuate in debts, 619.
property deposited cannot be set off against debt, 620.
nor surplus after realization of pledge, 620.
nor demand for damages, 621.
but assignees have lien for work and labour, where contract was to pay in money,
620, 621.
and demand for breach of contract to pay liquidated sum not a demand for
damages, 621.
set-off allowed for full amount of bill, irrespective of price paid, 621.
where acceptor compounds bills, 621.
where debtor to bankrupt has good right of, at date of bankruptcy, 621.
but none to be obtained by artifice, 622.
where notes of bank taken *bonâ fide* without notice of bank's failure and for value,
622.
secus, where no value given or holder holds as trustee, 622.

MUTUAL DEBTS AND CREDITS, PROOF IN CASE OF—*continued.*

set-off allowed, where security mortgaged on which creditor of bankrupt liable, but rights of mortgagee unaffected, 623.

where creditor and bankrupt both liable on bills forming item of account between them, no proof on, where no surplus after paying holders, 623.

cross-accommodation bills, 623.

where one of two parties to, solvent, allowed to prove on bankrupt's estate, but dividends stayed till bill paid, 623.

now no proof in such case till payment made, 624.

rule where both parties bankrupt, 624.

surplus of estate ultimately indebted applicable in favour of other estate, 624.

dividends in respect of proof on cash balance ultra bill account, now applicable, 624.

where debt disputed in account, dividend retained, till right tried, 624.

dividends retained till final settlement amongst bankrupt estates, 624.

creditor having provable debt and unprovable demand, and being indebted to bankrupt may set off demand and prove for debt, 624.

no set-off unless debts due in same right, 624.

joint debt or credit cannot be set off against separate, 624, 625.

but debt to agent for concealed principal may be, against debt due by agent, 625.

and debts in same right need not be on same account, 625.

retainer of debts out of legacies, 625.

legacy left after bankruptcy to bankrupt to and testator, 625.

legacy left before bankruptcy by creditor to wife of debtor, and wife dies before payment, 626.

legatee's share of assets retained against debt for assets borrowed, 626.

legacy retained against debt barred by Statute of Limitations, 626.

set-off in respect of claim for annuity, 626.

none for rent due to bankrupt's estate, where debt from bankrupt falls due after bankruptcy, 627.

nor for costs of nonsuit of bankrupt, after bankruptcy, as against assignee's costs against defendant, 627.

assignees paying money for creditor at his request may deduct from dividends, 627.

Statute of Set-off, 2 Geo. 2, c. 22, applies to actions by and against assignees, 628.

general equity of set-off, 628.

set-off, practical course of assignees as to, 628.

let in, where assignees elected to sue in assumpsit instead of trover, 628.

measure of damages, cases of, as cases of set-off, 629.

NEGOTIABLE SECURITIES,

who are creditors upon, under sect. 200, Act of 1861..1010, 1011, 1023.

NEGOTIABLE SECURITIES BELONGING TO BANKRUPT ESTATE. See

Official Assignee—Bank of England.

court has dispensed with general orders as to, for benefit of estate, 35.

and has under circumstances refused to order, at the instance of the official assignee, delivery of, by creditor claiming a lien upon, 35, 36.

NON-TRADER,

conditions as to act of bankruptcy by, 135, 136. See *Act of Bankruptcy.*

NOTICE,

of act of bankruptcy, 413 et seq. See *Protected Transactions.*

of assignment. See *Order and Disposition.*

of adjudication. See *next title.*

NOTICES, &c. See Notices and Advertisements, 1105.

general orders as to. See G. O., 6th November, 1861, and 19th November, 1861.

OFFICERS. See Registrars.

official assignees, &c. See *under titles of offices held.*

of insolvent court. See *Insolvent Debtors Court.*

OFFICIAL ASSIGNEE,

duties of, divisible, 28, 29.

appointment of, in London, 29.

in country, 29.

Lord Chancellor might remove and fill vacancies, 29.

OFFICIAL ASSIGNEE—*continued.*

- holds office during good behaviour, subject to removal for good cause by Lord Chancellor, 29.
- some vacancies not to be filled, 29, 30.
- provisional assignee of insolvent court made, 30.
- fees of, 30, 31.
- salaries of, 30.
- retiring annuities of, 31.
- retiring annuity impounded to make good defalcation, 31.
- on transfer of proceedings, court to which transfer made appoints new, 31.
- appointed by commissioners to act in bankruptcies in rotation, 31.
- appointment of, in bankruptcy, under hand of commissioner, entered of record, 31.
- on death or removal court appoints new, in each bankruptcy, 31.
- may retire, undertaking to pass accounts in each bankruptcy, 31.
- has no lien on papers, 31, 32.
- to make annual returns, 32.
- to receive messenger's account and pay it out of assets, 32.
- registrars of county courts to act as, 32, 44.
- general duties of, 32.
- not to keep under control more than 100*l.*, &c., 32, 33.
- to lodge monies over 100*l.* with banker, 33.
- to lodge securities belonging to bankrupt estate in Bank of England, 34.
- dishonoured securities to be delivered to, by Bank of England, 34.
- to serve notices of dishonour, 35.
- to receive, by order of commissioner, bills or notes out of Bank of England, 35.
- court, notwithstanding general orders, for advantage of estate, by consent ordered retainer of securities, &c., by, 35.
- and under circumstances refused to order a creditor claiming lien to give up securities at instance of, 35, 36.
- to direct payment into Bank of England of sums due to bankrupt estate over 500*l.*...39.
- to act, in taking possession, through messenger, 44.

OFFICIAL MANAGER,

- under winding-up acts, proof by, for call, 685.

ORDER AND DISPOSITION,

- goods in the, of bankrupt, with consent of true owner, may be sold for benefit of creditors, 444 et seq.
- assets held by executor *de son tort* may pass under clause as to, 376.
- or by executor who applies them to his own use by sufferance of beneficiaries, 376.
- taking possession under bill of sale, without notice of act of bankruptcy committed by debtor, will take goods out of operation of clause, 408, 409.
- registration of bill of sale does not interfere with operation of clause, 426.
- proviso in clause as to ship registry acts, 444.
- difference between older and later enactments as to order and disposition, 444.
- commissioner's order for sale needed to divest the property in the goods, 444.
- order need not name true owner, 444.
- but should define the goods, 444, 445.
- definition may be general, 445.
- title relates to act of bankruptcy, 445.
- order may be pleaded in bar *puis darrein continuance*, 445.
- may be obtained ex parte on *prima facie* case, 445.
- is not conclusive as against true owner, 445.
- may be obtained after the assignees have contracted for sale of goods, 445.
- nature of property, "goods and chattels," 445.
- fixtures, heirlooms, securities involving interest in land, 446 et seq.
- fixtures, though tenant's or trade fixtures, not within, 446.
- even though property severed from that in land, 446.
- Ex parte Sykes* remarked on, 447.
- even though fixtures have been brought on land by tenant, 447.
- instances, 447—449.
- Stansfeld v. Mayor of Portsmouth* remarked on, 448, 449.
- mortgage of property with trade fixtures thereon passes fixtures to mortgagee, in which case neither Bills of Sale Act nor order and disposition clause applies, 449.

ORDER AND DISPOSITION—*continued*.

- but where property in fixtures severed from that in land, Bills of Sale Act only applies, 449.
- heirlooms not within order and disposition clause, 449.
- quære*, as to shares in company holding land, 449.
- analogy of mortmain trusts, 449, 450.
- where bankrupt is true legal owner as trustee, executor, &c., clause does not apply, 450.
- where joint owner, 450.
- where separate owner uses property for joint purposes, 450, 451.
- exception if trust be not *bonâ fide*, or if *indicia* of ownership are left with trustee unreasonably, 451.
- cestui que trust must be *sui juris* to consent, 451.
- goods of firm in order, &c., of ostensible partners ignoring dormant partners, 451.
- Caldwell v. Gregory*, *semble*, overruled, 451, 452.
- stock left unreasonable time after dissolution in hands of continuing partners, 452.
- continued possession, for a reasonable time after dissolution, held possession of old firm, 452.
- debts, &c., in such case remain in order, &c., of old firm, even though assigned to new until notice of assignment be given to creditors, 452.
- notice to pay to remaining partners not sufficient notice of assignment to them, 452, 463.
- if assignment be executory, goods *à fortiori* remain in order, &c., of old firm, 452.
- if assignment be perfected by notice to creditors, then debts, &c., are in order, &c., of new firm, 452.
- on death of partner, goods remain in order, &c., of old firm, 453.
- possession by trustee in opposition to trust may bring goods within his order, &c., if cestuis que trust are *sui juris* and consent, 453.
- possession by cestuis que trust, according to tenor of trust, will not bring goods within their order, &c., 453.
- if *indicia* of ownership are unnecessarily left with mortgagor, mortgagee will be ousted by the clause, 453.
- in case of pure trust, if there be no reason for intervention of trustee, and *indicia*, &c., are left with cestui que trust, the goods will be held in his order, &c., 454.
- if possession of cestui que trust be not consistent with tenor of the trust, clause may have way, 454.
- this will not be so probably against other cestuis que trust not consenting, unless trustee has power of disposing of the property, 454.
- Darby v. Smith*, 454.
- time of bankruptcy means time of the commission of an act of bankruptcy capable of supporting the adjudication, 454.
- resumption of possession after act of bankruptcy unknown to true owner is protected transaction, and takes the goods out of the clause, 408, 409, 454, 455.
- property remains in order, &c., of former owner, unless change of ownership be complete and notorious, 455.
- notice to debtor as to choses in action or person in possession of chattels necessary to complete assignment, 455.
- quære*, as to transfer of documentary securities, 455.
- Ex parte Hall*, 455.
- foundation of rule, 455.
- choses in action assigned to bankrupt without notice, and by him re-assigned also without notice, *quære*, in his order, &c., 456.
- Ex parte Wood*, *Ex parte Newton*, 456.
- notice to person liable to pay is sufficient to perfect assignment, 457.
- where several successive assignments, notice by any person in the chain puisne to bankrupt, to any one prior to bankrupt sufficient, 457.
- such notice good as against every one puisne to person having notice, but not as against any one prior, 457.
- possession of documents of title may be irrecoverable by assignees, though goods represented by them may pass under clause, 457.
- assignment of share in newspaper must be registered at stamp office to take the share out of clause, 457.
- transfer of shares in company must be duly executed, even where to company itself, 458.
- bill of exchange transferable without notice to acceptor, 458.
- deposit of registered mortgage of ship will take mortgage out of clause, 458.

ORDER AND DISPOSITION—*continued.*

assignment of principal security will carry collateral security out of order, &c. of assignors, 458.

Ex parte Price, Ex parte Barnett, 458.

possession by bailee is possession by bailor, 459.

change of ownership must be notified to bailee, 459.

notice to bailee will be sufficient to take goods out of order, &c. of bailor, 459.

Ex parte Arbouin, 459.

Greening v. Clark, 459, 460.

where goods pass by delivery of warrant, &c., such delivery will take them out of order, &c., 460.

remarks on cases, 460, 461.

possession by sheriff, if legal, takes goods out of order, &c., of debtor, 461.

if true owner be resisted in his demand for possession by sheriff before act of bankruptcy committed, his consent to reputed ownership of debtor is rebutted, 461.

goods seized for distress are not in order, &c. of tenant, 461.

goods placed in hands of trustee for sale, at request of claimant, not in order, &c. of original owner, 461.

seizure by sheriff not sufficient, unless possession continued under it adversely to debtor, 461.

if goods are in joint possession of true owner and bankrupt, facts determine application of rule, 462.

what sufficient notice, 462.

notice to co-debtor or co-bailee, 462.

if co-debtor, &c. die without having imparted notice to his colleagues, notice does not survive, 462.

actual knowledge dispenses with notice, 462.

if assignee of equitable property be himself trustee of it no notice needed, 462.

notice must be definite, 462.

notice to pay debts to assignee, or forward letters to him, or the like, not sufficient, 463.

notice to solicitors of trustees is notice to trustees, 463.

when debtor is a joint stock company or corporation, 463.

notice to director, not being officer appointed to receive notice, not sufficient, 463.

Ex parte Harrison, 463.

quære, whether actual knowledge acquired by agent in another capacity notice to company, 463.

not so where agent has clear interest in concealing his knowledge from the company, 463.

if all persons to whom notice should be given have actual knowledge, notice not needed, 464.

assignment of mutual insurance policy requires notice, 464.

form of notice immaterial, 464.

notice sufficient, though it do not show who is true owner, 464.

parol notice sufficient, 464.

Ex parte Carbis, 464.

where company have lien on shares no further notice necessary, 464.

where company had power to sell a director's shares, which nevertheless remained in his name, they passed as in his order, &c., 465.

contract for lien on his master's goods by servant in possession not effectual if goods not removed from master's possession, 465.

quære, Hoggard v. Mackensie, Ex parte Hidden, 465.

where fund in court, stop order equivalent to notice, 465.

assignment of costs where no order to pay them does not require stop order, notice should be given to client who owes them, 465.

reversionary interest in chose in action is within section, 465—466.

notice to trustee of fund in court sufficient, though no stop-order obtained, 466.

if chattels have been property of bankrupt, and are still in his possession, unequivocal circumstances are required to take them out of clause, 466.

circumstances equivalent to delivery of possession may take them out of clause, though they be not physically transferred, 466.

where engagement by vendor to hold for the purchaser for limited time or purpose, 466—467.

where by custom of trade possession does not represent property, 467.

farm produce left by custom of country on land, 467.

ORDER AND DISPOSITION—*continued.*

if property has never been in bankrupt, his possession, *per se*, will not bring goods within clause, unless possession would hardly in reason be severed from ownership, 467.

furniture, horses, &c. hired, 467.

possession *prima facie* evidence of ownership, some evidence, therefore, necessary to rebut the application of the rule, such as evidence of custom of trade, &c., 468.

it should be shown that custom is notorious, and it must not be of a nature necessarily calculated to deceive, 468.

consent must be to reputation of ownership as well as to possession, &c., 468.

cases cited, where possession does not imply ownership, fall under this head, 468. other instances, 468—469.

true owner must be *sui juris*, 469.

assets with knowledge of administration left in hands of executor *de son tort* may pass, though letters of administration not taken out till after bankruptcy of executor *de son tort*, 469.

possession obtained of goods by grantee in deed which was act of bankruptcy, did not cause goods to pass under his bankruptcy, as the consent of assignees of grantor could not be implied, 470.

knowledge by true owner of bankrupt's possession must be proved, 470.

consent to reputation of ownership implied from acts or default of true owner, 470—471.

implication of consent rebutted by attempt to resume possession, 471.

procuring transfer of bill of lading of goods at sea, 471.

or of grand bill of sale of ship at sea, 472.

not sufficient if ship allowed to remain in bankrupt's possession on return to port, 472.

instances of attempt to resume possession rebutting implication of consent, 472.

notice to enable owner to resume possession at a future time will not suffice if bankruptcy intervene before possession actually taken, 473.

or if attempt to resume possession be colourable only, or be abandoned, 473.

if fraud has been used to obtain possession, consent of person defrauded cannot be implied, 473.

Load v. Green remarked on, 474.

Ex parte Richardson, 474—475.

Frazer v. Swansea Company, 475.

formerly where factor pledged goods committed to him they did not pass on bankruptcy of factor or pledgee, 475.

Factors' Acts, 475 et seq.

the fact that dealings between bankrupt and owner have been beneficial to the estate will not save the goods from the clause, 477.

who is true owner, 477.

trustee of entire legal interest where in possession, 477.

sometimes even where others in possession, if trustee could have barred cestuis que trust, 477.

cestui que trust if in position to require absolute transfer, 477.

purchaser on contract of immediate purchase, 477.

mortgagee *quoad* mortgage, 477.

assignees of bankrupt owner executors of assets, 477.

assignee under former second bankruptcy, wherein 15s. in the pound not paid, 477.

restrictions on last statement, 478.

husband of *feme covert*, except as to separate property, 478.

goods of woman living with bankrupt, not his wife, passed as in his order, &c., 478.

unless she believed she was married to him, 478.

execution creditor taking bill of sale from sheriff, or landlord who buys distress, 478.

onus of proof that goods were in order, &c. of bankrupt, lies on purchaser under commissioner's order, 478.

a question for jury, 478.

proviso as to Ship Registry Acts, 478.

registry of ships formerly conclusive of ownership, except as to trusts arising by implication of law, 479.

ships registered in name of one member of firm passed under clause to joint estate, notwithstanding Registry Acts, 479.

ORDER AND DISPOSITION—*continued*.

trusts not cognizable under Merchant Shipping Act, 1854..479.

otherwise under Merchant Shipping Act of 1862..479.

Lacon v. Liffen remarked on, 479—480.

neglect of provisions of the law as to transfer of ships will be evidence of consent to reputation of ownership, 480.

possession of ship *prima facie* carries title to freight, 480—481.

semble, if there be a surplus, true owner shall be reimbursed before any return be made to the bankrupt, 481.

ORDERS OF COURT OF BANKRUPTCY, HOW ENFORCED,

court enforces orders through messenger, or by imprisonment, &c., 1103.

orders of, have force of judgments, as to lands on registration, 1103, 1104.

powers of courts in aid of each other to enforce orders, 1104.

debtor's property in colonies, distribution of, 1104.

orders made in England may be enforced in Scotland or Ireland, 1104.

and conversely, 1104.

for powers in aid, of courts in England, Ireland, &c. See *Evidence*, 1088 et seq.

OVERSEER OF POOR,

earmarked property held by, does not pass to assignees, 375.

PARTICULARS OF DEMAND. See *Trader Debtor Summons*.

PARTNER,

proof by, on behalf of self and co-partners, 717.

PERJURY,

witness examined for discovery, &c. of assets, and swearing falsely, guilty of, 494.

See *Assets—Discovery, &c. of*. And see further, *Evidence*.

PETITION FOR ADJUDICATION,

may be filed immediately upon act of bankruptcy, 97.

must be filed within twelve months from act of bankruptcy, 97.

in case of Irish trader must be prosecuted in Ireland, though act of bankruptcy committed here, 98.

on conveyance for benefit of creditors, if sect. 68, Act of 1849, has been complied with, must be filed within three months, 121.

on declaration of insolvency within two months, 141, 142. See *Act of Bankruptcy*.

on the filing of a petition, &c. in foreign dominions of the crown must be filed within two months from advertisement, 149. See *Act of Bankruptcy*.

on trader debtor summons within two months from filing affidavit, 166, 167, 168. See *Trader Debtor Summons*.

what shall be reckoned as debts for purposes of, 180. See *Adjudication, Proceedings to obtain, &c.*

PETITION IN FORMA PAUPERIS FOR ADJUDICATION,

prisoner for debt may petition *in forma pauperis*, 228.

form of affidavit, 228.

proceedings on such petition, 228.

no power in gaol county court to transfer to proper county court, 228.

form of adjudication, 228.

debtor must be really pauper, 228.

and must be in custody at the hearing of the petition, 228.

whether outlaw can petition, *quære*, 229.

relation of act of bankruptcy in case of pauper petition, 229.

in such case there are no protected transactions during the imprisonment, 229.

persons in prison under County Court Acts, or for debt under 20*l.*, not entitled to petition *in forma pauperis*, 229.

PETITIONING CREDITOR,

liable instead of messenger for act done by latter under order of the court, 45.

debt of. See *Petitioning Creditor's Debt*.

PETITIONING CREDITOR'S DEBT,

any legal debt may be, though not presently payable, 177, 187, 188.

if no defence to it, 177.

indorsee may be for nominal value of bill or note, 177.

but banker's cash note purchased at discount after bankruptcy of banker cannot be set off for full amount, 177.

PETITIONING CREDITOR'S DEBT—*continued.*

- distinction, 177, 178.
- indorser cannot petition bill, &c., unless he has taken up on dishonour, 178.
- holder cannot petition against indorser or drawer unless he has given notice of dishonour, 178.
- debt on an award, 178.
- debt to surety on payment of principal creditor, 178.
- attorney's bill of costs, 178.
- even though unsigned, 178.
- court will not at the instance of third person grant rule to tax in order to annul adjudication founded on bill, 178, 179.
- equitable debt not sufficient, 179.
- quære*, costs on judgment as of nonsuit, 179.
- order for costs in divorce court not, 179.
- debt released or satisfied as by *ca. sa.* not, 179.
- but otherwise if debtor liberated *vi majori*, 179.
- quære*, whether debt included in insolvent's schedule is good, as against debtor, 179, 180.
- what shall be reckoned debts for purposes of petition (sect. 97, Act of 1861), 180.
- remarks on sect. 180..181.
- debts barred by Statute of Limitations, 181.
- debt merged in judgment, 182.
- or in higher security, 182.
- tender of debt after docket struck did not invalidate adjudication, 182.
- bond debt paid by surety formerly extinguished, 182.
- illegal consideration will vitiate debt, 182.
- e. g.*, secret payment or security to one creditor party to a composition, 182, 183.
- debt contracted by an infant, 183.
- as to balance of acceptances, 183—186.
- Sarratt v. Austin*, remarks on, 183, 184.
- quære*, when clear balance in favour of creditor if all the acceptances dishonoured, 184.
- where cross acceptances of equal amount, no petition till petitioner's are taken up, 185.
- even where one is joint, and cross acceptance several, 185.
- forged instrument will not create, even though debtor has acknowledged liability upon it, 185.
- must be a provable debt, 185.
- must be liquidated, 185.
- Ex parte Morgan* remarked on, 185, 186.
- interest on bill of exchange, &c., 186.
- quære*, debt on balance of account, 186, 187.
- if debt be an item in partnership accounts, *semble*, cannot be, 187.
- must not be due in *autre droit* by debtor, 187.
- need not be presently payable, 177, 187, 188, 192.
- must be payable at time certain, 188.
- must have accrued before trading ceased, 188.
- and before the act of bankruptcy, 188, 189.
- Ex parte Douthat* remarked on, 189.
- Brett v. Levett*, 190.
- note given as security for contingent debt, not, 190.
- date of acceptance or indorsement by alleged bankrupt must be shown to have been before act of bankruptcy, 190.
- need not have been due to petitioning creditor at time of act of bankruptcy, 190, 191.
- quære*, balance of account current at time of act of bankruptcy, 191.
- Shaw v. Harvey* remarked on, 191.
- interest is not to be released on future debt in estimating amount of, 192.
- where debtor not trader, debt must have been contracted since passing of Act of 1861..192.
- remarks on sect. 90, Act of 1861..192 et seq.
- "debt contracted or liability incurred after passing of act," 192, 193.
- call on winding-up order contracted at date of call, 193.
- otherwise where company registered under Companies' Act, 1862..193.
- arrear of interest accrued, since act, on debt due before, 193.
- petition must be on debt due in equity as well as at law, 193.
- joint petition must be on joint debt of all the debtors, 193.

PETITIONING CREDITOR'S DEBT—*continued.*

- separate petition may be on joint debt, 193.
- partner may petition against co-partner on a several debt, 193, 196.
- bill of firm given to secure debt of one partner will not be ground for joint petition, 193.
- amount of, necessary (sect. 89, Act of 1861), 194.
- deficiency in, may be cured by substitution of another, 194.
- legal creditor is the person to petition, 194, 195.
- authority of beneficial owner should be had, 195.
- husband and wife should petition together where the debt due to husband in right of wife, 195.
- but on bill, &c. due to wife *dum sola*, husband alone should petition, 195.
- agent who has sold in his own name should petition in respect of purchase-money, 195.
- executor or trustee may be petitioning creditor, 195.
- in latter case cestui que trust should concur, 195.
- joint obligees, &c. should petition jointly, 195.
- alien enemy cannot petition, 195.
- quære*, as to subjects in partnership with persons resident in enemy's country, 196.
- partner cannot petition against co-partners except where he could bring action for amount of debt, 196.
- quære*, whether infant can petition, 196.
- whether uncertificated bankrupt may petition, 196, 197.
- public officer of banking company may petition against member of company, 197.
- creditor of company cannot petition against member in respect of company's debt, 197.
- whether authority to sue implies authority to petition for adjudication, 197.
- enactment as to public officer petitioning, 197, 198, 215.
- declaration by public officer, 198.
- creditor may disqualify himself from petitioning by releasing, taking composition for debt, &c., 198.
- by electing inconsistent remedy, 199.
- what is such election, 199.
- by taking debtor in execution, 199.
- not by obtaining judgment merely, 199.
- whether petition can be maintained while action pending for same debt, 200.
- whether landlord, who has distrained, can petition, 201.
- creditor may petition although holding security of higher character for his debt, 201.
- and need not give up security nor value it on petitioning, unless under sect. 97, Act of 1861...201.
- election is not determined by nugatory act, 201.
- receipt of part of debt sufficient to reduce amount below the statutory amount, *semble*, is ground for refusing petition, though such receipt was after notice of an act of bankruptcy, if no other creditor entitled to petition, 202.
- whether creditor named in insolvent's schedule can petition, 202.
- creditor who has proved under invalid adjudication, may, 202.
- but not if former adjudication valid, 202.
- debt, provable under former adjudication, cannot be foundation for a new, 202.
- whether pendency of another petition for adjudication any obstacle to petition, 202, 203.
- substitution of debt on petition, 203.
- substitution of debt after adjudication, 203, 204.
- insufficiency may be other than of amount, 204.
- substitution may be of one of several debts where the debt is compounded of several, 204.
- but *semble*, another debt of original petitioning creditor cannot be substituted, 204.
- petitioning creditor must admit insufficiency, if he seeks to substitute debt, 204.
- debt not invalidated as foundation of petition by prior act of bankruptcy, 204.
- evidence as to, governed by general rules, 204, 205.
- admissions of bankrupt after bankruptcy, evidence on petition, though not against stranger, 205.
- but against stranger, bankrupt may be examined, 205.
- admissions of bankrupt to be evidence against stranger must be shown to be part of *res gestæ*, 205.
- debt once proved to exist need not be proved not to have been paid, onus lies on the opponent to show it was paid, 205.

PETITIONING CREDITOR'S DEBT—*continued.*

- debt on bill drawn or indorsed requires notice of dishonour to be proved, in general, 206.
- on petition for joint, where there is already a several, adjudication, court will order production of proceedings, 206.
- in actions by and against assignees, Gazette notice of adjudication, is sufficient to prove legal requisites, unless notice to dispute any of them be given, 206. See *Assignees.*
- is forfeited, if petitioning creditor compound with bankrupt for a preference over creditors, 206, 439 et seq. See *Crimes and Penalties.*

PLEADING, 944 et seq. See *The Bankrupt.*

PLEDGE,

- power to pledge or mortgage bankrupt's property, 522.

POLICY OF ASSURANCE,

- bottomry and respondentia bonds, proof for, 572.
- obligees in bottomry, &c. bonds and assured in policy admitted to claim and after loss to prove, 572.
- persons effecting insurance admitted to prove loss, 572.
- sect. 174, Act of 1849, extends to life assurance, 572.
- proof for premiums upon policies of insurance, 572, 573, 582, 586, 587.

POWERS,

- which bankrupt could exercise for his own benefit, may be exercised by assignees, 299.
- where appendant to estate are extinguished by bankruptcy, 299, 300.
- Haswell v. Haswell*, remarks, 300.
- in aid for obtaining evidence, 1088 et seq. See *Evidence.*

PRACTICE. See *Procedure.*

- on judgment debtor summons. See *Judgment Debtor Summons.*
- on trader debtor summons. See *Trader Debtor Summons.*
- on interlocutory applications. See *Interlocutory Applications, Practice on.*

PRACTICE ON PROOF OF DEBT,

- who may prove, (Act of 1849, sect. 164), 712.
- when and how debts may be proved, (Act of 1861, sect. 144), 712.
- declaration for proof, 712.
- proof in court or chambers or before registrar, 712, 718.
- proof, forms of. See General Order, 12th October, 1861, &c., 713.
 - by insurance broker for loss, where principal abroad (Act of 1849, sect. 174), 713, and see 572.
 - by agent of company abroad, 713.
 - by agent, cannot generally be without special authority, 713.
 - by one on behalf of several, not allowed, unless by consent, &c., 713.
 - or for convenience, 713.
 - by trustee, may be as of right, 714.
 - by cestui que trust, trustee should be joined, 714.
 - by collector of taxes, 714.
 - by person appointed by leave of court, where trustee bankrupt, 714.
 - or by other trustee (if any), cestuis que trust who are *sui juris* being joined, 714.
 - by executor against bankrupt co-executor, may be without leave of court, 715.
 - by new trustee, as to whom vesting order made, *quære*, 715.
 - where no solvent trustee, court has full discretion to appoint person to make proof, 715.
 - by wife on behalf of self and children, 715.
- proof, trustee of benefit society, where treasurer bankrupt, appointed to make, 715.
- treasurer of club appointed to make, against collector, 715.
- sole bankrupt trustee or executor allowed to make, where, 716.
 - order as to dividends in such case, 716.
 - or where one beneficiary proves on behalf of self and others, 716.
- proof by guardian or committee of infant or lunatic, 716.
 - by executor or administrator for testator or intestate, 717.
 - by assignee of bankrupt creditor, the latter joining, 717.
 - by married woman, as to separate estate, by order, 717.
 - or having protection order under Divorce Act, 717.

PRACTICE ON PROOF OF DEBT—*continued.*

- proof, where made by order of court, rights limited in order, 717.
 - may be made by partner for firm, 717.
 - practice as to, where debts claimed by bankrupt's family are disputed, 717.
 - when and where to be made, 717.
 - might have been made at any time at public sitting before final dividend declared, 718.
 - may now be made at any time (sect. 146, Act of 1861), 718.
 - For form of affidavit for (under sect. 146, Act of 1861), 718, see County Court Order, 1863, Schedule 49.*
 - solicitor of proving creditor, not "person in his employment" within sect. 146, Act of 1861..718.
 - nor treasurer of volunteer corps, a clerk in employment of commanding officer, 718.
 - merchant, acting as sole agent in London, is, 718.
 - proof by creditor, not proving before final dividend, not to disturb former payments, 718.
 - assignees of bankrupt creditor allowed latitude in proving, 718.
 - dividend delayed to allow proof, 719.
 - laches of creditors in proving, 719.
 - proof, how to be made, 719.
 - by declaration sent by post, 719.
 - deposition in court, &c., or affidavit, 719.
 - false declaration on proof, perjury, 719.
 - provisions for making affidavits, &c., 719. *See Evidence.*
 - statements of account, appended to declaration, to be examined by assignees, 719.
 - list of creditors who have proved to be made out by assignees, 719. *See Chapter, Assignees.*
 - alleged creditors, power to examine on oath, 719.
 - proof, evidence on, 720.
 - right of bankrupt to examine on, 720.
 - may be rejected against oath of creditor, 720.
 - fresh, may be required, where arrangement changed to bankruptcy, 720.
 - personal attendance of creditor, books, &c. may be required, 720.
 - costs to be auxiliary for proof of debt, 721.
 - creditor dying after affidavit of debt, but before proof tendered, 721.
 - after declaration sent to assignee, but before entry, 721.
 - proof, defective in form, not rejected, but court adjourns, 721.
 - not delayed on suggestion only of fraudulent preference, 721.
 - court of appeal may order, to be entered, without referring back to commissioner, 721.
 - inquiry as to, directed, where creditor alleges case for inquiry and tenders costs, 722.
 - on tender of, securities to be exhibited, 722.
 - proof on judgment to be made by office copy, 722.
 - creditor may abandon on judgment and prove for simple contract debt, 722.
 - on lost bill of exchange, 722.
 - in *autre droit*, right to prove, to be proved as well as debt, 722.
 - by petitioning creditor, need not be for debt on which petition grounded, 722.
 - claims for permission to prove, how and in what cases entered, 722 et seq.
 - claim may be entered, on behalf of creditor, who cannot be come at, 722.
 - where, by complexity of accounts, balance cannot be sworn to, 722.
 - where title to mortgaged property is disputed, 723.
 - where proof opposed and further examination required, 723.
 - to be struck out where not substantiated within reasonable time, 723.
 - dividend upon, reserved, 723.
 - striking out, does not prevent subsequent proof, 723.
 - creditor, while proving debt, privileged from arrest, 723. *See Bankrupt—Protection.*
 - application to expunge, costs of, 723.
 - to reduce proof should not be *ex mero motu* by official assignee, 724.
 - costs of proof, 724.
- PREFERENCE,
- preference, not fraudulent if in fulfilment of pre-existing duty, 431, 1097.
 - or of a contract to give security to a given creditor, 431, 1097.
 - but to make preference fraudulent, privity of person fraudulently preferred, not necessary, 1097.

PRINCE OF WALES ISLAND,
adjudication against traders in, 975 et seq.

PRISON. See *Gaol*.

lying in. See *Act of Bankruptcy*.

escape from. See *Act of Bankruptcy*.

adjudication by registrar against debtor in. See *Prison Adjudication*.

petition by debtor in. See *Debtor's Petition—Petition in Formâ Pauperis*.

PRISON ADJUDICATION. See *Registrar*.

gaoler to make monthly return of all prisoners for debt, 229, 230.

"custody upon process," 230.

to whom returns to be made, 230, 231.

returns from metropolitan prisons assigned to registrars of London court, 231.

from London district, outside metropolitan, to registrars of county courts, 231.

forms of returns, &c., 231.

registrar to attend and examine prisoners, 231.

to make adjudication, &c., 231.

married woman may be adjudicated, 232.

if registrar direct adjudication to county court, judge bound to proceed, 232.

forms of adjudication and certificate, 232.

copy certificate to be returned to district court, 232.

bankruptcies to be allotted to commissioners in rotation, 232.

forms in county courts, 232.

prisoner, on appeal, may challenge validity of his arrest, but cannot show cause against adjudication under sect. 104 of Act of 1849.. 233, 237.

prisoners under county court acts, or for less than 20*l.*, not included in gaoler's return, 233.

discretion of county court judges under the county court acts as to prisoners, enlarged, 233. See *Lunatic Prisoners for Debt*.

cannot be transferred, *semble*, under sect. 88, Act of 1861.. 244.

PRISONER. See *Execution—Gaol—Protection from Process*.

petition for adjudication by, against himself. See *Debtor's Petition—Petition in Formâ Pauperis*.

adjudication by registrar against. See *Prison Adjudication*.

PRIVILEGE,

bankrupt's solicitor cannot object on the ground of, to examination for discovery, &c. of assets, 496. See *Assets, Discovery, &c. of*.

PROCEDURE,

regulated by general orders, 52.

on appeals, ditto, 52.

how evidence taken, 53.

special case, 53.

money may be made payable according to judgment of court upon special case, 53.

appointment of shorthand writers, 53. See *Shorthand Writers*.

before registrars, 54, 55.

certificate for opinion of commissioner or judge, 55.

parties bound to appear before registrar and answer, and liable for perjury if swearing, &c. falsely, 55.

parties refusing to answer before registrar may be ordered to pay costs, 55, 56.

on judgment debtor summons. See *Judgment Debtor Summons*.

on trader debtor summons. See *Trader Debtor Summons*.

PROCEDURE TO OBTAIN ADJUDICATION,

at suit of creditor, 207 et seq.

creditor's petition, 207, 220 et seq.

judgment debtor summons, 221. See *Judgment Debtor Summons*.

routine on creditor's petition, 207, 208.

whether general agent can, without special authority, show cause against adjudication, 209.

on meeting to show cause, petitioning creditor to prove disputed requisites, 209, 237.

bankrupt may surrender and consent to immediate advertisement, 209, 238, 239.

bankrupt's incapacity to be heard may enure to confirm bankruptcy, 209.

PROCEDURE TO OBTAIN ADJUDICATION—*continued.*

- unless record be invalid on its face, 209.
- bankruptcy to originate by petition, 210.
- form of petition, 210.
- variance between petition and affidavit in support, 210.
- petition without affidavit not receivable, 210.
- remarks on enactment that "bankrupt, &c. shall be subject to law of bankruptcy," 210, 211.
- where petition to be filed and prosecuted, 211.
- powers to consolidate, impound or transfer petition, 211, 212, 213, 215—216, 220, 239 et seq.
- direction as to what court, *semble* directory, not essential, 212.
- residence in district gives jurisdiction, though no trade carried on there, 213.
- order of transfer by registrar, *quære* valid, 213.
- petition, not yet filed, may be ordered to be filed in any district court, 213.
- petitions must be printed, written may be received under circumstances, 213.
 - how to be signed and witnessed, 213.
 - may be amended by leave, 213.
- creditor neglecting to prosecute petition in time, not to present new petition without leave of court, 214.
- petition irregular to be refused, 214.
- second petition against same bankrupt to be indorsed by registrar with notice of former, 214.
- priority of petitioner, against the same bankrupt at the same time, settled by lot, 214.
- if one only prepared to prosecute, he to be preferred, 214.
- no subsequent petition to go further than filing, pending time for prosecution of earlier, 214.
- new petition, presented in lieu of one rejected as informal, has priority as an amendment of the former, 215.
- public officer of company proper person to make affidavit, 197, 215.
- petitions directed to commissioners in rotation, 215.
- formerly allotted by ballot, 215.
- second petition against bankrupt to be directed to commissioner having the first, 215.
- petition against one or more members of a firm, following petition against other member, to be prosecuted in court having cognizance of former petition, 215, 244.
- senior commissioner may order prosecution in such case in other court, 215, 244.
- notice of application should be given to persons interested, 215.
- held not to authorize annexation of several separate adjudications to a subsequent joint adjudication, &c., unless all the separate traders be members of the firm, 216.
- if debtor not a trader, personal service of petition necessary, 216.
- indorsement on copy petition in such case, 216.
- time for appearance, 216.
- personal service dispensed with in certain cases, 216.
- form of indorsement, 216.
- petition, where debtor not trader, must be accompanied by affidavit alleging act of bankruptcy, 217.
- on filing petition, application to be made to commissioner to appoint day for adjudication, 217.
- where petitioner does not proceed in due time, court empowered to adjudicate on another petition, (sect. 96, Act of 1861,) 217.
 - differences under this, as compared with the older enactment, 217.
- quære*, whether on same petition at instance of another creditor, 217.
- summonses may be had for obtaining the attendance of witnesses to prove requisites, 217, 218.
- bankrupt cannot himself be summoned as a witness in support of adjudication, 218.
- petitioning creditor must attend in person in general, but his attendance may be dispensed with, 218.
- before adjudication, debt to be scrutinized, and securities produced and examined, 218.
- act of bankruptcy must be proved as in a trial at law, 218.
- solicitor of bankrupt competent witness as to anything not committed to him professionally, 219.

PROCEDURE TO OBTAIN ADJUDICATION—*continued.*

- adjudication may be sued out against some members of a firm only, 219.
- petition against two or more may be dismissed as to one or more, without affecting others, 219.
- consolidation of petitions against partners, 220.
- petitioning creditor's privilege from arrest, 220.
- satisfaction for malicious petition, 220.
- section 91, Act of 1861, applies to, where false deposition without reasonable cause, though insufficient to support adjudication, 220.
- plaintiff should annul adjudication before proceeding on section, 220.
- judgment debtor summons by joint creditors not partners, must be on joint affidavit, 221.
- sufficient levy by sheriff pending judgment debtor summons, ground for dismissing summons, 221.
- debtor may petition against himself, 221. See *Debtor's Petition for Adjudication—Petition in Formâ pauperis—Prison Adjudication.*

PROCEEDINGS. See *Records.*

- custody of, formerly, 51.
- general form of, written or printed on paper, &c., 52.
- forms of, to be regulated by general orders, 52.
- want of form not to invalidate, 54.
- transfer of. See *Transfer, &c.*

PROCESS,

- meaning of "process" in sect. 198, Act of 1861..1040 et seq.

PROOF OF DEBT,

- persons entitled at date of act of bankruptcy to sue bankrupt for liquidated demand, formerly entitled to prove, 526, 557.
- demand for work and labour, or goods sold and delivered, formerly provable, 526.
- principle suggested, 526, 527.
- demand in its nature unliquidated, not provable, 527.
- demand founded in contract and liquidated, provable, though action might be framed in tort, 527.
- demand for damages liquidated by agreement before bankruptcy, provable, 527.
- breach of trust provable, 527.
- damage on breach of certain contracts liquidated by custom, and provable, 527.
- breach must have occurred before act of bankruptcy, 528, 529.
- if judgment signed before bankruptcy for definite amount, judgment debt provable, 529.
- debt, though defeasible, provable, 529.
- proof might be expunged, if defeasance took effect, 529.
- amount of proof determined by amount beneficially due, not by that legally due only, 529.
- bond given by principal to surety, and forfeited before bankruptcy, amount actually paid by surety alone provable, but this provable though paid after bankruptcy, 530.
- debt, compounded for, may in general be proved for full amount unpaid, if composition not paid, 530.
- if composition arrangement has so altered position of parties that they cannot be replaced in their original relations, then composition only can be proved, 530.
- if composition has been abandoned and debts revived, securities given on faith of composition must be restored, and sureties for its payment are discharged, 531.
- goods sold at price certain with discount for prompt payment, proof for price, less discount, 531.
- proof for breach of trust estimated by same rules as debt in such case is estimated in chancery, 531.
- cestuis que trust may elect between profits actually realized by employment of trust monies, and interest at court rate, 531.
- it must be considered closely what the breach of trust consists in, and debt arising out of it only is provable, 531.

PROOF OF DEBT—*continued.*

- order in chancery against executor, to pay into court amount admitted as assets, does not entitle legatee to prove for sum so admitted, but only to general order, to prove for what may be due, 532.
- call on contributory may be proved by liquidator, though debts of company not paid, for which contributory liable, 532.
- debt satisfied before bankruptcy not provable, 532, 533.
- debt barred by statute of limitations not provable, 533.
- six years must be complete before adjudication, 533.
- anything which will take debt out of statute may be used in support of proof, 533.
- insertion of debt, not yet barred by statute, in insolvent's schedule, prevents bar, 533.
- filing petition by insolvent, stopped time running, 533.
- but including debt, already barred, in insolvent's schedule, did not revive it, 533.
- Scotch sequestration does not stop time running against debt, due at its date, 534.
- matters may be shown to rebut evidence tending to take debt out of statute of limitations, 534.
- debt included in insolvent's schedule may, nevertheless, be proved against him, 534.
- debt might be proved under third commission, which was provable under second, in which 15s. in the pound was not divided, 534, 535.
- debt founded in felony cannot be proved until bankrupt has been prosecuted, or prosecution shown to be hopeless, 535.
- in resisting proof in such cases assignees must show that prosecution may be reasonably proceeded with, or might be but for act of proving creditors, 535.
- claim may be entered pending result of prosecution, 535.
- proof cannot be supported on ground merely that creditor has unsuccessfully prosecuted for other acts of same nature, 535.
- court bound to take the objection if assignees do not, 535.
- court will not assume that felony has been committed, unless on clear evidence, 535.
- no objection to proof for such debt that creditor is secured by surety, 535, 536.
- where no demand enforceable at law or in equity, no proof, 536.
- debt contracted in fraud or for illegal consideration, or in illegal trade, 536, 537.
- debt of alien enemy not provable, 537.
- if remedy would be only suspended at law, claim will be allowed, *semble*, and dividend reserved, 537.
- no proof on void instrument, 537.
- bill of exchange not provable against drawer or indorser, without due notice of dishonour, 537, 601.
- infant on coming of age not allowed to prove for premium paid for admission as partner into bankrupt's firm, 537.
- debt contracted abroad in transaction which would in England have been smuggling, provable, 537.
- bankers could not prove for cheques paid after notice of act of bankruptcy, 537.
- usury, 537, 538.
- creditor who has taken his debtor on *ca. sa.*, may prove on releasing him, 538.
- but if he take him after bankruptcy he will in general be held to have elected, 538.
- money paid to assignees by mistake not provable, 538.
- debt must be due to person proving, 539.
- but if recoverable by any lawful process debt is provable, 539.
- bankrupt trustee, &c. may prove against his own estate by leave of court, 539.
- court will in such case secure dividends, 539.
- solvent trustee, if any, preferred, 539.
- cestui que trust* sometimes allowed to prove on behalf of trust fund, 539.
- but if executor become bankrupt in trade carried on as executor under trusts of will, assets employed in trade will be liable to creditors, and no proof will lie for them, 539, 540.
- on judgment debt. See *Judgment*.
- for interest, 544.
- interest not provable under earlier acts on simple contract, unless expressly reserved, 544.

PROOF OF DEBT—continued.

- compound interest sometimes allowed, 544.
- surety paying after bankruptcy can claim no interest which his principal could not have claimed, 544. See *Rent—Wages, Proof for.*
- payment of assessed taxes, 551, 552.
- poor rates, 552.
- one year's parochial rates may be paid in full, 552.
- friendly societies, 552 et seq. See *Friendly Societies.*
- for proof upon settlements under which bankrupt has an interest, 649 et seq. See *Settlements.*
- under joint and separate adjudications, 653 et seq. See *Adjudications, Joint and Separate.*
- proof, consequences of, 689 et seq. See *Consequences of Proof.*
- for B a certificate under Act of 1849, sect. 257..702 et seq. See *Certificate, B a.*
- for expunging and reducing proofs, 706 et seq. See *Expunging and Reducing Proofs.*
- for practice on proof of debt, 712 et seq. See *Practice on Proof of Debt.*
- for claims, 722 et seq. See *Practice on Proof of Debt.*

PROOF OF DEBT (PAYABLE IN FUTURO),

- rule that debts presently payable should alone be proved, relaxed in favour of bills current at date of bankruptcy, 557.
- debts not payable at date of bankruptcy may be proved, deducting rebate of interest, 557.
- proof in case of debt payable by instalments, 557.
- rebate of interest is on dividend, not on proof, 558.
- contract for bill treated as though bill actually given, 558.
- bills or notes accepted or made by bankrupt, provable, though no action could be maintained during currency, 558.
- so, if bankrupt be in fact primarily liable, though he appear as indorser only, 558.
- proof immediately, on bill payable on demand or at fixed time after sight, 558.
- proof against overseer of the poor for balance in hand, though not payable till end of year, 558.
- debt now need not be even due at date of act of bankruptcy, if due at date of adjudication and *bonâ fide* contracted, 559.

PROOF OF DEBT (SURETY),

- debts becoming due to a surety or bail for bankrupt, by payment of principal to creditor after date of bankruptcy, 559.
- bail not included in 49 Geo. 3, c. 121..559.
- surety and person liable for debt of bankrupt may prove after having paid such debt, 560, 565.
- semble*, he may prove for costs and expenses of having been obliged to pay, 560.
- every one, who has made himself legally liable to pay debt of bankrupt, is surety, 560.
- instances, 561.
- Ex parte Barret, Re Moseley Green Company*, 561.
- sub-lessee not surety for his lessor as to rent, 562.
- surety cannot prove till he has paid, 562.
- remainderman joining in mortgage for debt of tenant for life cannot prove, 562.
- joining in new security, on cancellation of the old, is not payment of the old, 562.
- surety barred, by principal's certificate, in respect of monies paid after bankruptcy of principal, though paid too late to obtain benefit of proof, 562, 563.
- surety may compel principal creditor to prove, 563, 565.
- debt of principal creditor must be subsisting debt at date of adjudication, to enable surety to prove, 563.
- semble*, surety may prove for money actually paid by him, though made up of principal and interest, 563.
- clause (sect. 154, Act of 1861) does not extend to cases where bankrupt is surety and proof is tendered on behalf of co-surety who has paid more than his share, 563.
- co-surety may stand in room of principal creditor, 563.
- joint debtor paying entire debt after bankruptcy of co-debtor cannot prove for apportioned share, 564.
- Ex parte Porter* remarked on, 564.
- surety must have paid whole debt or part in discharge of whole, 564.

PROOF OF DEBT (SURETY)—*continued.*

- payment of part and receipt of personal indemnity from creditor as to residue, not payment, &c., 564.
- penalty on bond is "whole debt," though obligee was creditor for larger sum, 565.
- administrator of surety allowed to claim, until state of assets ascertained, 565.
- surety, having paid, may prove, but if proof already made, he may stand in creditor's place, and may in any case compel creditor to prove, 565.
- if part of debt guaranteed, dividends shall be applied rateably in case of surety, 565.
- surety, paying after bankruptcy to creditor who has proved, entitled to nothing out of bankrupt's estate, except what creditor would have been entitled to, 565.
- surety may waive his rights, but they cannot be defeated by arrangement between principal creditor and debtor, 566.
- surety, having agreed that principal creditor may retain entire dividends against unsecured portion of his debt, is barred by certificate of principal debtor, 566.
- payment by surety, though on security substituted for original security, and to which principal debtor not party, yet entitles surety to prove, 566.
- clause (sect. 8, 49 Geo. 3, c. 121) does not extend to surety for the payment of an annuity, except as to arrears, 566.
- even though annuity secured by a bond, forfeited at date of bankruptcy, 567.
- surety for payment of annuity granted by bankrupt, in what manner to come in under bankruptcy, 567.
- annuitant not to sue surety for bankrupt, till value of annuity ascertained by the court, though annuity granted before 6 Geo. 4., 567.
- nor to take execution on judgment for annuity entered up before passing of act, 567.
- certificate of bankrupt surety no bar to action for arrears of annuity accrued since his bankruptcy, 568, *quære*. See *Contingent Liability*.
- proof in respect of goods pledged by bankrupt and redeemed by owner, 568.
- enactment applies to mercantile transactions only, 568, 569.
- proof for annuities, 569 et seq., 586, 587. See *Annuities*.
- proof for policies of assurance, bottomry and respondentia bonds, 572 et seq. See *Policy of Assurance*.
- premiums, 586, 587.
- for contingent debts, 573 et seq. See *Contingent Debts*.
- for contingent liability, 580 et seq. See *Contingent Liability*.
- for damages and costs, 587 et seq. See *Damages and Costs*.
- for apprentice fees, 593 et seq. See *Apprentice Fees*.
- for proof on particular securities, 594 et seq. See *Covenants*.
- for proof on bonds, 598 et seq. See *Bonds*.
- on bills of exchange and promissory notes, 601 et seq. See *Bills of Exchange and Promissory Notes*.
- for proof by creditors holding specific relations to bankrupt, 612 et seq. See *Mutual Debts and Credits*.
- by creditors holding securities, 629 et seq. See *Creditors holding Securities*.

PROOF,

- in respect of distinct contracts, 675.
- by partner against joint estate or separate partner when allowed, 682 et seq.
- by official manager under winding-up acts, for call, 685.
- by liquidators, under Companies' Act, 1862, for debts, 685.
- by shareholders in cost-book mine against purser, 685.
- by assignees of joint estate against separate and *vice versâ*, 685 et seq.
- none, *semble*, by assignees of joint-stock company for contribution, 685.
- by principal for money, &c., in hands of bankrupt as factor or agent, 365.

PROOF, DOUBLE,

- not allowed by creditor of firms with common partners, 673.

PROPERTY IN RIGHT OF WIFE,

- property of wife, which husband can dispose of, passes by his bankruptcy to his assignees, 316, 317.
- where property is a chose in action it does not pass, unless reduced into possession in lifetime of bankrupt, 317, 318.
- on death of wife, joint tenant of chose in action, *jus accrescendi* defeats the right of the husband and his assignees, 318.

PROPERTY IN RIGHT OF WIFE—*continued.*

- assignees take subject to wife's equity to a settlement, if any, 318.
- which she may waive, 318.
- held, that wife cannot file bill for settlement out of equitable real estate, 319.
- reference directed to determine *quantum* of settlement, 319.
- no settlement out of legal chose in action, 319.
- separate estate of wife does not pass to husband's assignees, 319.

PROPERTY PASSING BY BANKRUPTCY,

- real estate of bankrupt passes, 257, 258.
- certificate of appointment of assignees to be registered where conveyance would want registration, 258.
- personal estate of bankrupt vests, 258, 259.
- contingent, future and executory interests, and possibilities coupled with an interest, and rights of entry vest, 259.
- not so bare possibility, 259.
- all assignable interests, 259.
- reversion, remainders, advowsons, &c., 259.
- covenants running with land, &c., and covenants incident to quasi reversion on lease by estoppel, 259.
- half-pay of East India officer, *quære*, 260.
- annuities, heriots, &c., 260.
- undivided moiety of joint estate which is severed by bankruptcy, 260.
- goodwill of business, 260.
- trade mark if assignable, 260.
- assignment by bankrupt of goodwill or trade mark does not prevent bankrupt practising trade or using trade mark himself, 260.
- may prevent his assigning right to use to any one else, 260.
- patent rights and copyrights pass, 260.
- some property of the bankrupt requires order of the commissioner to pass it to the assignees, notwithstanding their appointment, 261.
- estates tail, copyholds and stock, 261.
- See *Estates Tail—Copyholds—Stock in Funds—Conditional Estates—Mortgages—Judgments—Lands subject to Rents—Powers—Choses in Action—Property in right of Wife*,
- exceptions to, 320 et seq. See *Liens—Stoppage in Transitu—Trustee—Agent—Executor—Property specifically appropriated—Goods returned—Foreign Lands—Property taken in Execution—Protected Transactions—Debts paid to the Crown*.
- not the bankrupt's, 419 et seq. See *Fraudulent Warrant of Attorney, &c.—Judges' Order by Consent, &c.—Unregistered Bills of Sale—Fraudulent Extent in Aid—Fraudulent Preference—Voluntary Conveyance—Forfeitures and Penalties—Order and Disposition—Assignees*.

PROPERTY OF BANKRUPT TAKEN IN EXECUTION,

- remarks on *Edwards v. Scarsbrooke*, 396, 397.
- creditor, having security, to be paid rateably only, unless in respect of execution levied by seizure and sale, &c., 396.
- execution levied by seizure only, cannot be maintained against assignees in bankruptcy, 397.
- execution paid out by money, proceeds of property assigned for benefit of creditors by deed under 192nd section, *quære*, whether creditor entitled to retain money, 397.
- Re Cracknell* stated and discussed, 397, 398.
- how far execution, levied after act of bankruptcy, may be maintained, 398.
- ancient effect of relation of assignee's title, 398.
- if contract was complete before bankruptcy, formal acts necessary to give it effect might be completed after bankruptcy, 399.
- sheriff liable formerly in trover to assignees for execution levied after act of bankruptcy, 399, 400.
- protected transactions, 400.
- notice to sheriff of act of bankruptcy binds him to pay to assignees, 400.
- if sheriff after notice pay creditor who has not notice, creditor not bound to refund, 401.
- sheriff may act at his risk, 401.
- has no claim against assignees for costs of preparing execution stayed on account of act of bankruptcy, 401.

PROPERTY OF BANKRUPT TAKEN IN EXECUTION—*continued.*

if sale not complete before notice of act of bankruptcy, monies belong to assignees, 401.

bill of sale by sheriff, if absolute, was sufficient completion by sale to support execution, 401.

sale on execution for 50*l.* or upwards, to be by auction advertised, 402.

if writ placed in sheriff's hands and sale be effected, though not under same writ, creditors' title is complete, 402.

instances, 402, 403.

"prior act of bankruptcy" in 133rd sect., Act of 1849, means "prior" to sale, not to writ only, 403.

remarks confined to *bonâ fide* executions on *bonâ fide* judgments, 403.

under former law if goods were taken in execution on judgment upon fraudulent warrant of attorney, &c., and sold before fiat, money belonged to creditor, 404.

now such execution is invalid, though levied by seizure and sale, 404.

execution for debt over 50*l.* against trader cannot now be levied by seizure and sale without notice, 404, 405.

judgment obtained without notice of act of bankruptcy is protected transaction, 405.

PROPERTY SPECIFICALLY APPROPRIATED,

by bankrupt before bankruptcy, does not pass to assignees except subject to such appropriation, 377.

instances, 377—379.

if appropriation be made by contract for value, it is not revocable, even before bankruptcy, without consent of person for whose behoof it was made, 379.

but money coming to the hands of a person on an undertaking to repay it in a certain event, and being mixed with his general assets, is a mere debt on the event happening, and must be proved for as such, 379.

assent of holder to the appropriation not necessary to its completion, 379, 380.

notice to person, for whose behoof appropriation made, is not necessary, 380.

Thayer v. Lister, 380.

semble, the order should be specific to hold the goods, &c. for the person, &c., 380,

demand of credit for the intended beneficiary, on account of goods consigned, will not charge the consignment in favour of the beneficiary, *semble*, 380.

bonds sent on eve of bankruptcy to indemnify a creditor who had been defrauded, held a fraudulent preference, though bonds marked by bankrupts while solvent with the creditor's name, unknown to him, 381.

For case of good appropriation, see *Ex parte Imbert*, 381, 382. See, however, 386, 432.

general agreement to pay, or general direction to assent to payment, not specific appropriation, 383.

money paid into court, or to an arbitrator to await award, is specifically appropriated, 383.

by judge's order by consent it was agreed that sum to be found due by an award should be set off against debt and costs; sum, though not ascertained till after bankruptcy, held bound by the contract, 383, 384.

but assignees in general not bound by bankrupt's submission to arbitration before award, 384.

Marsh v. Wood remarked on, 384.

cases of specific appropriation akin to lien, 384.

contract to purchase and settle property, mere chose in action, till property obtained; but if purchase made in satisfaction of covenant, property purchased becomes charged with trusts of settlement, 385.

other cases of property becoming charged as it becomes defined, 385.

money paid voluntarily to meet future liability, if not paid in contemplation of bankruptcy, well paid, 385, 430, 431.

cases distinguished from *Ex parte Imbert*, 386.

when bills are drawn against specific assets in hands of acceptors and drawers, and acceptors fail, holders have claims on specific assets, *Ex parte Waring*, 386, 387.

holders need not have notice of specific deposit, 388.

right of drawer to lien, on property deposited to meet bill, may be specifically assigned, but does not pass by indorsement of bill, 389.

PROTECTED TRANSACTIONS, 400 et seq., 405. See *Property of Bankrupt taken in Execution*.

bonâ fide purchases from bankrupt, without notice of act of bankruptcy, are, 405.
suspicious circumstances will not vitiate sale, unless enough to prove *mala fides*, 406.

sale in such case is not a dealing with bankrupt, as agent for assignees, but on his own account, 406.

purchases from bankrupt, though with notice of act of bankruptcy, good, unless petition filed within twelve months, 406.

Act of Geo. 4 protected *bonâ fide* payments only, not an assignment to secure antecedent debt, 407.

quære effect of present law, 407. See 409.

purchase *bonâ fide* made more than two months before commission, but not perfected, might be perfected afterwards, 407.

formal acts may be supplied after bankruptcy, either as regards bankrupt or assignees, 407.

dealings must have been with bankrupt personally, or his ordinary agent, 407.

power of attorney revoked by bankruptcy, 407.

quære where donee of power was ignorant of act of bankruptcy, 408.

taking possession under bill of sale, if without notice of act of bankruptcy, will take goods out of order and disposition, 408, 409, 454, 455.

execution of bill of sale as security for debt, already due, is not protected, nor is registration of it, 409.

possession taken, after an act of bankruptcy, under bill of sale executed before the act, creditor having knowledge that the act of bankruptcy, which was in fact executed, was intended, but not knowing that it was complete, did not defeat order and disposition clause, 409.

payments made by bankrupt, without notice, to payee, of act of bankruptcy committed, protected, 409.

assignment to provisional assignee of insolvent court protected, 409.

"dealings," later enactments distinguished from earlier, 409, 410.

instances of protected transactions, 405, 408, 410, 590.

judgment signed against bankrupt after secret act of bankruptcy, is, 590.

knowledge that trader is in difficulties, will not vitiate receipt in payment of debt, 411.

payment of joint debt, after notice of separate act of bankruptcy, bad, 411.

act of bankruptcy will not enable assignees to recover payment made, unless such act sufficient to support their title on the petition under which they were appointed, 411.

payment made *bonâ fide* more than two months before commission, valid under 6 Geo. 4, c. 16..411.

knowledge of insolvency of bankrupt not sufficient to invalidate payment, 411.

payment made by stranger after bankruptcy, in pursuance of order given by bankrupt before bankruptcy, not good unless order could be supported against assignees, 411, 412.

quære whether supportable as payment to bankrupt, 412. See *Addenda*.

onus lies on person supporting protected transactions to prove *bona fides* and want of notice, 412.

facts must be pleaded specially in answer to action by assignees, 412.

fraudulent preference not protected, 412.

payment made by bankrupt to payee of money, paid by payee to bankrupt, for purpose which fails, valid, 412.

money paid into court by bankrupt may be paid out after bankruptcy, 412.

payments to bankrupt *bonâ fide* after bankruptcy, valid, 412.

loan not a "payment" under former law, 413.

quære whether a "dealing," 413.

payment made under pressure of legal process, good, though made with notice of payee's act of bankruptcy, 413. See *Addenda*.

quære whether judgment must be recovered, 413.

proof of notice of act of bankruptcy, 413.

notice to sheriff's officer in possession, not notice to execution creditor, 413.

general notice that an act of bankruptcy has been committed, enough without specifying act, 413.

notice of immediate intention to commit act of bankruptcy sufficient, if in fact act has been committed, 414.

notice to creditors' attorney sufficient, 414.

or to attorney's agent, 414.

PROTECTED TRANSACTIONS—*continued.*

- notice of intention to commit, not enough, unless act has been committed at the critical date, 414.
- notice of inchoate act sufficient, if when complete it relates, 414.
- commission was formerly notice to every one, 414.
- otherwise as to fiat and petitions, 414, 415.
- advertisement in Gazette not notice, unless proved to have been seen, 415.
- it is enough if facts known which amount to act of bankruptcy, though party in fact ignorant that they constituted act, 415.
- general allegation of act of bankruptcy sufficient, if true, 415.
- delivery of notice at attorney's office not sufficient unless to attorney himself, or competent agent, 415.
- information to attorney's clerk not having management of the business, who did not inform his master, not notice, 415.
- when notice is held to have been received, 416.
 - when actually received, or when, but for wilful default of recipient, it might have been, 416.
 - if sent by post, *prima facie*, held to have been received, when in ordinary course it would have been delivered, 416.
 - this may be rebutted, if it be shown that in fact, without default of recipient, it was not received till later, 416.
- notice to one joint "dealer" notice to all, 416.
- law as to notice strictly carried out, 416.
- notice to a trustee held to invalidate payment to cestui que trust who had no notice, 416.
- notice to body corporate, 417.
- provisions as to protected transactions extends only to acts done after act of bankruptcy, 417.

PROTECTION FROM ARREST. See *Bankrupt*, 905 et seq. Also *Arrangements with Creditors*, 1039 et seq.

PROTECTION FROM PROCESS,
no stay of proceedings on trader debtor summons, 161.

PROTECTION OF ASSETS. See *Assets, Discovery, &c. of*.

PURCHASE,
made under bankruptcy must be confirmed by bankrupt petitioning to annul, 796, 806.
or indemnity must be given, 796.

REALIZATION OF ASSETS. See *Assets, Discovery, &c. of*.

RECORDS,
and proceedings to be sealed, 17, 54.
how to be kept, 17, 50, 51.
of Insolvent Debtors' Court, how disposed, 17.
entry of record of proceedings not before entered, 50.
clerk of inrolments had custody of, 50.
now chief registrar, 51.
filing, custody and inspection of, to be settled by general order, 52.

REDUCING PROOFS. See *Expunging and Reducing Proofs*.

REFERENCE. See *Award—Assignees*, 849 et seq.

REGISTRAR,
vacancies in office of, not to be filled, when, 9, 17, 18.
chancellor may attach to district, 9.
may act for commissioner in certain cases, 11, 18.
order by, when so acting, should show authority, 11, 18.

REGISTRARS. See *Chief Registrar*.
appointment of, 17.
vacancies (some) in general filled by Lord Chancellor, 18.

REGISTRARS—*continued.*

- former powers to remove, 17.
- present powers to remove, 18.
- substitute for, may be appointed during illness, &c., 18.
- original powers of, 18, 19, 54, 55, 56.
- appeal from, 19, 55.
- may be ordered to hold meetings, 19.
- in country to transmit to chief registrar copies of certain entries, 21.
- also monthly returns, 21.
- petitions, affidavits, &c., in country to be filed in office of, 21.
- to attend court, 22.
- to attend court of appeal, 22.
- office of registrar of appeals, 22.
- general duty of, 22.
- to deliver gaols, 22.
- court to order attendance of, at gaol, 22, 230.
- notice to gaoler and execution creditor, 23, 231, 232.
- to examine prisoner, 23, 231.
- to adjudicate, &c., 23, 231.
- if of county court, to send copy certificate to court of bankruptcy, 23, 232.
- vice versa*, 23, 232.
- where prisoner refuses to answer, registrar to report, 24, 232.
- to appoint first meeting of creditors, 24.
- in country to tax bills, 24, 41.
- charges of brokers, &c., in country settled by, 24, 25.
- to make annual returns to chief registrar, 25.
- duty of, appointed to preside at meeting of creditors, 25.
- to attend audit of official assignee's account, 25.
- in certain cases to examine the account, 25.
- to take security of creditors' assignee, 25.
- to preside at dividend meeting, 26.
- to report resolution for winding-up, &c., 26.
- to swear witnesses on affidavits, &c., 26.
- declarations of insolvency in country may be entered in office of, 26.
- may attest such declaration, 26.
- the senior in country district to keep roll of attornies, &c., 27, 49.
- disqualified from parochial offices, &c., 27.
- paid by salary, 27.
- retiring annuities of, 27, 28.
- of county courts, to be for those courts registrars in bankruptcy, 28, 57.
- of meetings, 28:
- of county courts, to act as official assignees, 32.
- duty as such. See *Official Assignee*.
- parties summoned before, bound to appear and answer, 55.
- and may be made liable for perjury if swearing, &c. falsely, 55.
- and may be made to pay costs, refusing to answer, 55, 56.

REGISTRATION,

- office for, of deeds of arrangement, 1019.
- under various sections of Act of 1861 distinguishable, *quære*, 1019.
- court has no jurisdiction to extend time for, under sect. 192..1019.
- production of deeds and documents upon, 1019.
- want of verification by commissioner of documents for, 1020.
- assents must be absolute before, 1020.
- affidavits to be delivered to registrar upon, 1020.
- copy deed and account, &c., to be delivered to registrar upon, 1022.
- creditors entitled to inspect and have copies, 1023.
- registration, twelve months' delay fatal to application to rescind, under sect. 200.
- 1024.
- particulars of deed, under sect. 192, to be registered in book for the purpose, 1029.
- and published in London Gazette, 1029.
- deeds of arrangement (other than those registered under sect. 192) to be registered in court of bankruptcy, sect. 194..1029.
- and in default not to be evidence, 1029.
- debtor's affidavit for, under sect. 192, may be dispensed with, 1059.

REGISTRATION—*continued.*

difference of, under sects. 192 and 194..1030.

court may allow further time for, under sect. 194, when, 1030.

but this to be without prejudice to 4th condition of sect. 192..1030.

delay, what is reasonable ground for, as excuse for further time, 1030.

instance of permission to register, under sect. 192, *nunc pro tunc*, 1030.

such permission refused, where, 1031.

deed not registered, not received in evidence as deed, 1031.

but its execution may be proved as act of bankruptcy, *sed quære*, 1031.

registration, deed requiring, under Act of 1861, to bear denoting stamp, 1032.

deed to bear memorandum of, sect. 196, Act of 1861..1033.

after, jurisdiction of court and rights, &c. of parties, sect. 197..1033.

section 197 construed strictly, 1033.

registration, memorandum of, is no protection under sect. 198, against detainer on former arrest, 1039.

protection under, analogous to that under sect. 162, Act of 1849..1046.

not a discharge of prior arrest or detainer, 1047.

certificate of, not conclusive of validity of deed under sect. 192, Act of 1861, 1053.

notwithstanding certificate of, process may issue in case of fraud, &c., 1054.

registration, power of court to stay adjudication during time allowed for, 1055.

RELATION OF ASSIGNEES' TITLE,

to act of bankruptcy. See *Vesting of Assets in Assignees.*

application to, of 87th section of Act of 1861..211.

RELEASE,

recital in deed, under sect. 192, Act of 1861, that composition to be in discharge of debts, equivalent to a release, 1027.

debtor to procure, under deed within sect. 192, must prove due execution of deed, 1053.

RELEASE FROM ARREST OR IMPRISONMENT,

sects. 112 and 162, Act of 1861..905 et seq. See *The Bankrupt.*

REMAINING ABROAD. See *Act of Bankruptcy.*RENT. See *Land subject to Rents.*

landlord may distrain before act of bankruptcy for full amount due, 544.

after act of bankruptcy he may distrain, but distress is only available for one year's arrear, 545.

section 129, Act of 1849, only refers to rent due before bankruptcy, 545.

limit to landlord's right is imperative, though he had no notice of act of bankruptcy, 545.

even though distress was before act of bankruptcy on which adjudication was founded, if subsequent to another act which would support adjudication, distress is limited, *sed quære*, 545.

distress available for all rent in arrear as against persons other than bankrupt and assignees, 545, 546.

mortgagee of leaseholds, whose goods are distrained, entitled to marshal as to goods subject to distress, 546.

landlord, suffering goods to be removed from demised premises, loses his right to distrain, but may prove, 546.

where pending replevin tenant and pledgees become bankrupt, and tenant's assignee gets possession of goods distrained, landlord cannot distrain them again, 546.

landlord must elect to prove or distrain, 546.

landlord, to enforce his claims against sheriff in possession, must distrain *de facto*, 546.

payment by bankrupt to landlord after act of bankruptcy under threat of distress, good, 547.

execution creditor, whose execution overridden by bankruptcy, allowed to retain money paid in discharge of distress, 547.

sheriff seizing in execution at the suit of landlord, after act of bankruptcy, not justified in paying rent to him, 547.

landlord may forfeit distress by allowing goods to remain in the order and disposition of bankrupt after levy, 547.

RENT—continued.

- distress, after act of bankruptcy, for three years' rent, withdrawn on payment and agreement made to waive right of distress for quarter's rent since accrued, money paid in discharge by trustees in possession of bankrupt's property not recoverable from the landlord by the assignees, 547.
- distress levied before act of bankruptcy available for full amount, though goods not sold till after bankruptcy, 548.
- rent due before bankruptcy not discharged by certificate as against goods not belonging to bankrupt, 548.
- rent due from assignees holding after bankruptcy cannot be proved, 548.
- apportioned part of rent now provable up to day of adjudication, 548.
- enactment applies to matters pending at date of act, 548.

REPEAL,

- acts and parts of acts repealed (sect. 230, Act of 1861), 1107.
- reservation of existing rights, 1108.
- cases as to effect of repeal clauses in Acts of 1849 and 1861..1108.

REPUTED OWNERSHIP. See *Order and Disposition*.**REQUISITES,**

- legal bankrupt's application to annul, must be for want of, 799. See *Annulling Adjudication*.

RESPONDENTIA BONDS,

- proof for, 572. See *Policy of Assurance*.

RETIRING ALLOWANCES,

- of commissioners, 15, 16.
- of registrars, 15, 16, 27, 28.
- of officers of court, 15, 16, 31, 40.
- impounded to meet defaults, 31.
- of officers of Insolvent Court, 66, 67.

SALARIES. See *Commissioners and Officers of the Court of Bankruptcy by the titles of their Offices*.

- of commissioners and officers of Insolvent Court, 67.

SALE. See *Act of Bankruptcy—Fraudulent Conveyance*.**SALE OF BANKRUPT'S ESTATE,**

- general sale, 514 et seq. See *Assets, Discovery, &c. of*.
- of property of bankrupt in mortgage. See *Proof by Creditors holding Security*.
- of bankrupt's office of inheritance, 517.
- title and completion of contract on, 517 et seq. See *Assets, Discovery, &c. of*.
- sale of perishable commodities before choice of assignees, 521.
- of goodwill and book debts, 521, 522.

SAVINGS' BANK,

- officers of, becoming bankrupt, debts due by them as such, primarily payable, 367.

SCHEDULE D.,

- forms of deed under Schedule D. (sect. 200, Act of 1861), difficulties as to, 1024.
- evidence as to holders at date of deed of negotiable securities, 1024.
- "other similar circumstances" (sect. 200), 1024.
- deed as in Schedule D., what estates pass to trustees under, 1025.
- copyholds vest, *semble*, in trustees without admittance, 1025.
- or as if debtor bankrupt, and order made under sect. 114, Act of 1861.. 1025.
- deed in Schedule D., where deed in form as, double fines payable (*semble*), 1025.
- such a deed, a breach of condition not to assign in a lease, 1025.
- to bar estates tail, should be enrolled, *semble*, 1025, 1026.
- form in Schedule D., omission from, of words of limitation, 1026.
- such a deed, defective as containing no release, 1026.

SEAL OF COURT,

- registrar to provide, 17.
- records to be sealed with, 17.
- judicial notice to be taken of, 17.
- counterfeiting to be felony, 17.

SEAL OF COURT OF BANKRUPTCY, 1076 et seq. See *Evidence*.

SEARCH WARRANTS, 484, 485 et seq. See *Assets, Discovery, &c. of*.

SECURITIES,

creditors holding, proof by. See *Creditors holding Securities, Proof by*.

SEPARATE DEBT,

how payable, 656.

what, as distinguished from joint, 663. See *Adjudication, Joint and Separate, Proof under*.

SEQUESTRATION,

of ecclesiastical benefice, 514. See *Assets, Discovery, &c. of*.

Scotch, does not stop time running against debt due at its date, 534. See *Proof of Debt*.

SETTLEMENTS,

bond or covenant in settlement, liability of bankrupt under, 649.

breach of trust of trustee becoming bankrupt, 649.

priority of debt for breach of trust of bankrupt, taking also an interest under settlement, over claim of assignees for such interest, 649.

if bankrupt liable under covenant to settle money, assignees cannot claim personal interest of bankrupt without fulfilling covenant, 651.

lien of trustees, on bankrupt's interest in other trust funds, to secure such covenant, 651.

bankrupt's reversionary interest under a will, liable to make good monies misapplied by him as trustee under will, 652, 653.

where devastavit committed by executor, who is also residuary legatee, is proved on bankruptcy, dividends in respect of, applied to make good legacies, 653.

For proof upon breaches of trust, see further, 531 et seq.

SHERIFF. See *Execution*.

duplicate of judgment debtor summons to be given to, where debtor in custody, 150.

SHIP REGISTRY ACTS. See *Order and Disposition*.

SHORT BILLS OF EXCHANGE,

do not pass to assignees of banker, with whom lodged, 371.

unless parties treat them as cash, 371.

SHORT HAND WRITERS,

appointment of, 53.

to deliver copy to registrar within two days, 53.

fees of, 53.

declaration to be made by, 54.

SINGAPORE,

adjudication against traders in, 975 et seq.

SOLICITORS,

of court of bankruptcy, 48.

may practise and may plead without counsel, 49.

roll of, to be kept by chief registrar in London, 49.

by senior registrar in country districts, 49.

to give address for service on signing roll, 49.

which shall be within three miles of General Post Office, or within five miles of court in country, 49 50.

when traders as scriveners, 82.

admission of debt to be attested by attorney, 169, 170.

creditors' assignees or majority of them appoint solicitor to bankruptcy, 880.

Lord Chancellor appoints, in what case, 882.

and may remove him, but, after acting, only with leave of court and on payment of his costs, 880.

solicitors of bankruptcy, court will only recognize as such, those appearing on proceedings, 881.

See further as to solicitors, Assignees, 880 et seq.

SPECIAL CASE. See *Procedure*.

SPECIFIC PURPOSE,

property held by bankrupt for. See *Agent*.

property held by bankrupt for, does not pass to assignees, 368.

SPECIFIC SECURITY,

position of creditor holding joint property as, against firm and individual partners, 678 et seq.

STAMP, DENOTING,

under sect. 195, Act of 1861..1032 et seq. See *Arrangements with Creditors*.

STAMP DUTY,

on judgment debtor summons, 151.

STAMPS AND FEES,

stamps, none payable in respect of bankrupt's estate, except as in Sched. C., Act of 1849..1064.

fees payable by means of, 1065.

fees, general orders direct from time to time what shall be payable, 1065.

on swearing affidavits, what allowed, 1065. See *Evidence*.

unstamped document, none to be used, &c. (sect. 42, Act of 1861), 1065.

stamps to be defaced by officer, 1066.

stamps on petitions, 1066.

spoiled or not used, allowed for, when, 1067.

provisions of former acts as to, extended to stamps under Acts of 1849 and 1861 (sect. 51, Act of 1849), 1067.

STATUTE OF LIMITATIONS,

assignees cannot set up as to unclaimed dividends, 889. See *Assignees*.

STOCK IN THE PUBLIC FUNDS,

where bankrupt beneficially entitled to stock, court may make order for transfer, 271.

where invested in fictitious name, court of chancery order transfer into true name, 272.

where title was in conflict, court of chancery ordered transfer into court, and directed inquiries, 272.

STOPPAGE IN TRANSITU,

what it is, 340.

suggested theory on which it may be supposed to rest, 340, 341.

earliest appearance of, in our law, 341.

whether rescission of contract or resumption of lien, 341.

authorities each way, 341, 342.

part payment does not prevent stoppage, 342, 350.

semble, if property sold within a reasonable time after stoppage, assignees of purchaser have action for the conversion, 342.

application of suggested doctrine to case of rescission, 342.

where goods perishable, 342, 343.

if purchaser refuse to accept goods, at time fixed for completion, vendor may rescind and sue for damages, 343.

parties to the right, 344.

how it is determined, 344.

how it may be exercised, 344.

vendor only can stop, but any one is vendor who is entitled to vendor's lien, or could sue the purchaser directly on the contract for purchase, 344.

e. g., agent for a concealed principal, 344.

agent who is himself liable to his own principal, 344.

vendor of part of undivided bulk, 344.

semble, person claiming to stop must have had right of property, not merely of possession, 344.

Sweet v. Pym, 344, 345.

alien enemy may stop if the purchaser was a British subject trading with enemy by licence of the crown, 345.

vendor's authorized agent may stop, 345.

stranger may stop on behalf of vendor, if his act be ratified while the right still exists, but his act will not prolong the right, 346.

goods may be stopped against purchaser or his assignees in bankruptcy or insolvency, 346.

STOPPAGE IN TRANSITU—*continued.*

against his agent, though claiming lien against purchaser himself, 346.

against all persons claiming through purchaser, save by authority of the vendor, 346.

remarks on *Morley v. Hay*, 346, 347.

carrier, though appointed by purchaser, has lien on the goods for their carriage as against vendor, and cannot be defeated by the stoppage of the goods, 347.

goods cannot be stopped against *bonâ fide* indorsee of bill of lading without notice of purchaser's insolvency, 347.

but notice of purchaser's insolvency at the time of the indorsement will vitiate indorsee's title as against vendor's stoppage, 347.

dock warrant, by special custom, equivalent to bill of lading, 347, 348.

indorsement of conditional bill of lading conveys no title unless and until condition is performed, 348.

nor will conditional indorsement of bill absolute in form, 348.

where bill pledged to creditor of consignor, he cannot take other debts so as to oust right of stoppage, 348.

bill of lading is authority from vendor to confer title, 348.

title to the bill must therefore be traceable from vendor of goods—loss of link in title will vitiate title to goods, 348, 349.

contract by vendor to consign as security will bar his right to stop, 349.

whether, where no balance against consignee, consignor can stop, 349, 350.

right accrues on insolvency of purchaser, purchase-money being unpaid, 350.

neither part payment nor payment by bill will prevent right, unless bill retired, 350. even though the bill has been negotiated by the vendor, 350.

transit lasts from time vendor parts with possession till purchaser acquires it, 351.

possession must be actual, by goods being placed under purchaser's control, in person or through his agent, 351.

carrier is not for this purpose purchaser's agent, 351.

shipment on board ship chartered by purchaser, unless charterparty be a hiring of the ship, will not determine transit, 351.

test of hiring for this purpose, 351.

even then right may be specially reserved, 351.

carrier, &c. may become agent for purchaser, 352.

where goods are consigned to be forwarded, whether transit complete at first destination, *quære*, 352.

transit may be determined by actual possession at intermediate port, 352.

Holst v. Pownall overruled, *semble*, 352, 353.

until actual delivery, lawful possession of middleman will continue the right, 353, 356.

if transit complete, delivery to agent of purchaser authorized *ad hoc* will determine right, 353.

but delivery must be absolute, 353.

if wharf have been used by purchaser as his own place of business, or if wharfinger have expressly assented to hold the goods for him, delivery to wharfinger will determine right, 353, 354.

delivery to middleman acting for purchaser, if conditional, will not determine transit, unless condition complied with before goods stopped, 354.

but if distinct assent be given by middleman to hold for purchaser, subject only to his own right of lien, that will determine transit if physically complete, 355.

in absence of such assent, transit continues while aught remains to be done to perfect purchaser's right to possession, 355, 357.

possession of part in the name of the whole determines right as to the whole, but possession of part, with intent to sever that part, does not determine right as to the rest, 355.

or if right to possession of part is incomplete, right to stop that part survives delivery of rest, 355.

rule the same where goods are in the hands of any bailee, not a carrier merely, 355.

attornment of bailee to purchaser gives purchaser possession, 356.

attornment, how evidenced, 356.

where vendor himself retains possession, receiving rent for warehousing, no case of stoppage arises; he neither loses his lien, nor is it lost by acknowledgment that goods are the property of purchaser, 356.

such attornment will prevent a new lien arising, 356.

demand by purchaser of possession, bailee having no good right to refuse, will bar the right to stop, 353, 356.

STOPPAGE IN TRANSITU—continued.

- but if his title to possession in aught incomplete, attornment requisite, 355, 357.
- which must be unequivocal, 357.
- whether indorsement of West India Dock warrant sufficient delivery of goods before presentation, *quære*, 357.
- where part delivered by warehouseman, himself vendor, his lien remains as to residue, 357.
- constructive delivery must have been obtained *bonâ fide* to bar lien or right to stop, 357.
- possession to bar right must have been taken with intent to determine transit, 357.
- whether possession has been taken with this intent, is question of fact, 357.
- stoppage to be valid as against assignees, must be taken without collusion with bankrupt, 351.
- transit once determined, right cannot revive, 358.
- notice to the person in actual possession given by vendor or his agent, sufficient to enable exercise of right, 358.
- notice to the master of person having actual possession is sufficient, if given in such time as that by reasonable diligence they can communicate with him before delivery of goods, 358.
- wrongful stoppage has no effect on rights arising out of contract of sale, 358.
- that goods were stopped is a mixed conclusion of law and fact, and the facts raising such conclusion should be particularly averred, 358.

SUB-PARTNERSHIP,

- partner entering into, proof in such case, 688.

SUBSEQUENT PROPERTY, 971, 972. See Discharge, Order of.**SUMMONS,**

- summons, form of, 54.
- on judgment debt. See *Judgment Debtor Summons*.
- to trader having privilege of parliament, 154, 155.
- members may commit other acts and be bankrupt thereon, 155.
- might have been bankrupt under repealed sections 72 and 73, Act of 1849..152, 155.
- may under trader debtor summons, 155, 164.
- differences between this mode of procedure, and that by judgment debtor summons, 155.
- to trader debtor generally, 156. See *Trader Debtor Summons*.

SURETY OR BAIL FOR BANKRUPT,

- proof by, 559 et seq. See *Proof of Debt—Bills of Exchange*.

SURRENDER,

- bankrupt must, before petitioning to annul for want of requisites, 795. See *Annulling Adjudication*.
- as to surrender by bankrupt, its consequences, 901 et seq. See *Bankrupt*.

SUSPENSION, &c. OF ORDER OF DISCHARGE,

- ground for. See *Discharge, Order of*.

TAXING MASTER,

- bills may be referred to, from country, &c., 24.
- appointment of, 40.
- salary of, and increase of salary, 40, 43.
- retiring allowance of, 40, 43.
- vacancy to be filled by Chancellor, 40.
- office of, held during good behaviour, 40.
- removable by Chancellor for misconduct, 40.
- deputy may be appointed by Chancellor during illness, &c., 41.
- remuneration of deputy, 41.
- Chancellor may order vacancy not to be filled, 41.
- duties of, 41.
- registrar to act as, in country, &c., 41, 42.
- charges of brokers, &c. to be settled by, 42.
- sums and fees received by, to be paid to chief registrar's account, 42.

TAXING MASTER—*continued.*

business to be done in person, 42.

with the exception of making, &c. copies of bills of costs, 42.

office open daily, 42, 43.

disqualified from parochial office, 43.

TEN DAY STATEMENT, 487. See *Assets, Discovery, &c. of.*

TENDER,

without tender of composition, bankrupt not released under sect. 230, Act of 1849..994. See *Arrangements with Creditors.*

THREE DAY STATEMENT,

on debtor's petition, 222, 223, 483. See *Assets, Discovery, &c. of.*

TITLE, &c. OF ACT OF 1861,

Act of 1861 to be cited as "The Bankruptcy Act, 1861" ..1109.

to be construed with so much of Acts of 1849 and 1854 as not repealed, 1109.

TORT,

discharge no bar to action of, 964.

secus, if cause of action, ground for proof and proved in bankruptcy, 964.

TRADERS IN INDIA, &c., ADJUDICATION AGAINST,

courts established for relief of insolvents in East Indies (9 Geo. 4, c. 73), 975.

continued by 11 & 12 Vict. c. 21..975.

judges of supreme court to appoint official assignee, 975.

act extended to Prince of Wales Island, Singapore and Malacca, 975.

prisoners for debt to petition court for relief, 976.

official assignee, estate to vest in, upon filing of petition, 976.

where petition dismissed after vesting order made, order to be null and void, 977.

but prior acts of assignee to be valid, 977.

lying in prison twenty-one days, an act of insolvency, 977.

court on petition of alleged insolvent may revoke, &c. adjudication, 978.

on adjudication upon creditor's petition, vesting order to have effect, as if made on petition by insolvent, 979.

filing petition under 11 & 12 Vict. c. 21, and adjudication an act of bankruptcy (sect. 75, Act of 1849), 980.

see now sect. 75, Act of 1861..980.

fiat, creditor may sue out, in bankruptcy upon act of bankruptcy by insolvent, 981.

evidence, copies of proceedings to be received as, 981. See *Evidence.*

insolvency, notices of, to be published in Gazette of Presidency and in London Gazette, 981.

proof of debts, 982.

choice of assignees to be as in England, 982.

discharge of insolvent not to affect creditors beyond limits of East India Company's charter, 983.

insolvent made bankrupt, penalty for non-surrender of, 983.

power of court of bankruptcy to grant certificates to insolvents, 983, 984.

one-third of assets to be reserved from dividend unless court satisfied that all estate, &c. is within limits of charter, 984.

part reserved may be divided after twelve months, 984.

unclaimed dividend, court to make order as to payment or deposit of, 985.

creditors out of limits may inspect proceedings sent to directors, 985.

adjudication against debtor made bankrupt, &c. in India, &c., but residing or having property elsewhere (see sect. 218, Act of 1861), 985.

proceedings in such cases, 985.

TRADERS LIABLE, UNDER ACT OF 1849, TO BECOME BANKRUPT,

75 et seq.

alum makers, 75, 88.

apothecaries, 75.

auctioneers, 75, 78.

bankers, 76.

holders of shares in joint stock bank, *quære*, 76.

not if purchased for mere purpose of becoming bankrupt, 77.

bleachers, 77.

brokers, 77, 78.

brickmakers, 78, 85, 88, 90.

TRADERS LIABLE, UNDER ACT OF 1849, TO BECOME BANKRUPT—

continued.

- builders, 78, 79.
- calenderers, 79.
- carpenters, 79, 90.
- carriers, 79.
- cattle or sheep salesmen, 79.
- coach proprietors, 79.
- cowkeepers, 79, 86.
- dyers, 79.
- fullers, 79.
- innkeepers, hotel, tavern and coffee-house keepers, 80.
- lodging-house keeper, *quære*, 80.
- limeburners, 80.
- livery stable keepers, 80.
- market gardeners, 80.
- millers, 81.
- packers, 81.
- printers, 81.
- scriveners, 81, 82.
- shipowners, 81.
- shipwrights, 81.
- victuallers, 81.
- warehousemen, 81.
- wharfingers, 81.
- general evidence of trading sufficient without proof of specific acts, 82.
- insuring ships, 82.
- using trade of merchandize, 82, 83.
- buying and selling, &c., 82, 89.
- selling produce of one's own land or labour, 83, 85, 87.
- manufacturing, &c., 84, 88.
- buying and selling land not, 87.
- buying and letting for hire, 87.
- workmanship of goods and commodities, 87, 88.
- buying and selling must be a practice or intended practice, 88.
- must not be merely collateral to business, 88, 89.
- legality of trade immaterial, 89.
- smuggler may be, 89.
- or clergyman, 89.
- factors, 82, 89.
- commission agents who obtain orders only, *quære*, 89.
- exceptions, 89—91.
- farmers, 89, 90.
- members of companies, 76, 90.
- contract to victual fleet does not make contractor, 91.
- trading need not have continued till bankruptcy, 91.
- but if it had ceased, statute would not support fiat under, 91.
- should have been for six months preceding bankruptcy, carried on in district, 91.
- this not *sine qua non*, 91.
- drovers not now excepted, 90.

TRADER DEBTOR SUMMONS, 156—176.

- strict compliance with act and orders necessary, 156.
- affidavit of debt requires statement that particulars of demand actually served, 156.
- immaterial that summons contain fuller description than particulars, 156, 157.
- what sufficient compliance with rule 68..157, 158.
- if service made on one partner only, in order that it may avail against any other, affidavit must state that it was made at place of business, 157.
- particulars should show the nature of the debt with sufficient clearness to enable debtor to state whether he owes the debt or not, 158.
- may be amended, if court thinks debtor has not been misled, 158—160.
- where description, &c. of creditor omitted after his signature of particulars of demand, amendment allowed, 158.
- creditor should state the cross claims allowed by him as set-off, 158.
- and should not claim for an amount more than the balance, 158.
- particulars not vitiated by containing one item not sustainable, 158.
- but must aver a debt, which, as averred, would support declaration, 158, 159.

TRADER DEBTOR SUMMONS—*continued.*

- variance between particulars and affidavit, 157, 159.
- affidavit to be filed within one calendar month after service of particulars, and must state debt precisely, 159.
- description of parties should be the same in the summons and the particulars, 159.
- indorsement and service of, 160.
- proviso as to service on partners does not apply to all joint debtors, but only such as are in trade in partnership, 160.
- does not apply to joint stock company, 160.
- company summoning debtor must prove authority given to person to make demand of payment, 160.
- affidavit, where sworn and filed, not allowed in general to be taken off file, 160.
- affidavit of debt, unanswered under mistake of law, taken off file by consent, 161.
- summons issued in respect of two debts may be proceeded on as to one, 161.
- protection from process, no stay of proceedings on, 161.
 - otherwise if debt released, 161.
- manner of proceeding on appearance of trader, 161, 162.
- court has general discretion as to requiring bond or not, 162.
- may adjourn question of security, 162.
- will refuse to order bond if it be inequitable in creditor to press for it, 163.
 - or if reasonably satisfied that there is good defence to demand, 163.
- discretion will not in general be interfered with by court of appeal, 163. See *Arrangements with Creditors*, 62.
- practice, if debt admitted in part, is to make bond as to whole, 163.
 - action, of which bond is to await result, must be in superior court, 164; see also 174.
- may be allowed on terms, 164.
- may be dismissed by reason of matter subsequent, on terms as to costs, 164.
- court may rehear, if misled, 164.
- if debt not denied, creditor is entitled to admission, 164.
- signing admission is waiver of privilege of parliament, 164.
- on summons of firm each partner should sign admission, 164.
- whether on return of summons trading may be traversed, *quære*, 164, 165.
- court will not try validity of demand if *prima facie* sufficient, 165.
- dismissal by consent of former summons, no bar to new, 165.
- if well issued, court has no jurisdiction to refuse to examine debtor, 165.
- hearing, is judicial act to be performed by commissioner in person, 165.
- not attending summons or refusing to admit, &c., and not paying, &c., act of bankruptcy, 165, 166.
- petition to be filed within two months from affidavit, 166.
- if bond ordered and debt not due, failure to give bond no act of bankruptcy, 166.
- conduct of creditor in the meantime may prevent completion of act of bankruptcy, 166, 168.
- where admission was by mistake imperfect, imperfection no act of bankruptcy, 166.
- lunatic cannot commit act of bankruptcy under these clauses, 166.
- where fiat which issued within two months was annulled, whether subsequent fiat or petition after two months could be supported, *quære*, 166, 167.
- jurisdiction of court to dismiss if debtor fails to appear, *quære*, 167.
- trader signing admission and failing to pay, &c., 167.
- tender equivalent to payment, 167.
- creditor giving time, &c. prevents act of bankruptcy, 168.
- trader admitting part and not paying part admitted, &c., an act of bankruptcy, 168.
- if bond not required, then failure to pay part admitted no act of bankruptcy, 168, 169.
- if affidavit of merits as to part, then failure to pay, &c. part admitted, no act of bankruptcy, 169.
- after admission, affidavit of merits and execution of bond, court *functus officio*, 169.
- cannot alter terms of bond once approved and executed, 169.
- what is refusal to admit, 169.
- court may enlarge time for admission, &c., 169.
- admission, signed out of court, to be attested, &c., 169, 170.
- must be properly stamped, 170.
- admission not to be taken off file, because filed under misapprehension of its effect, 170.

TRADER DEBTOR SUMMONS—*continued.*

court may give costs to creditor or trader, or direct them to abide event, 170, 171.

where directed to abide event, successful party entitled as costs in the cause, though he technically obtaining judgment, 170.

but where the plaintiff, though in the main successful, forfeited the costs of the cause by his own default, commissioner had no jurisdiction to order debtor to pay costs of summons, 171.

costs in general not given when debt paid before return of summons, 171.

as to jurisdiction of court to give costs in such case, *quare*, 171.

costs where action and summons for same debt, 171.

costs should be asked for, when summons is disposed of, 171, 176.

where creditor failed in action to recover amount of demand sworn to, and the affidavit was made without probable cause, defendant entitled to costs, 172.

date of action sufficiently shown by statement of the writ, 172.

"probable cause," 172, 173.

whether action must be brought to verdict, *quare*, 174.

application for costs under 5 & 6 Vict. c. 122, s. 19, must be made in time, 174.

enactment does not apply where action brought in inferior court has been removed by *certiorari*, 164, 174.

where defence to demand is equitable, 174, 175.

where debt has been assigned, assignee must join in summons, 175.

fractional parts of day reckoned, 175.

whether debtor entitled to cross-examine creditor, supposing the jurisdiction of court admitted, 175.

TRANSFER OF JURISDICTION,

of country commissioner to county courts, 9.

duties of Lord Chancellor relating to, 10.

TRANSFER, &c. OF PROCEEDINGS,

power of London court to consolidate, impound and transfer proceedings, 239.

power will be used when for the clear benefit of parties concerned, 240.

remarks on section (88th, Act of 1861), 240.

discretionary with court whether it will exercise power or not, 240.

cases illustrating circumstances in which it will be exercised, 240 et seq.

application for exercise of power should not be delayed, 241.

creditor's petition will be preferred to debtor's, 241.

application may be made at any period, 241.

power formerly provisional to senior commissioner, 241.

will not be used where no practical benefit can ensue, 243.

e. g., two separate petitions will not be consolidated if no joint estate, 243.

impounding bankruptcy of married woman having separate estate and imprisoned

on debt contracted *dum sola*, bankruptcy pending against her husband, 243.

where debts over 300*l.*, court cannot transfer at once to county court, 243.

power seems not to apply to case of adjudication by registrar, 244.

court having ordered transfer to county court cannot rescind order, though county court refuse the jurisdiction, 244.

a second petition against one or more members of a firm, should be prosecuted in court where first is in prosecution, 215, 244.

senior commissioner may direct such other petition to be filed and prosecuted in another court, 215, 244.

this section (98th, Act of 1849) only applies where firm has continued in partnership up to date of first bankruptcy, 244.

senior commissioner's discretion preserved, 244. See *Adjudication, Procedure to obtain.*

where debtor in gaol petitions, gaol county court orders transfer to proper county court, 244, 245.

power of transfer given to meeting of creditors, 245. See *Annulling.*

TRUST, BREACHES OF,

by partners, participation of firm in, 667 et seq. See *Adjudication, Joint and Separate.*

TRUST PROPERTY,

misapplication of, by partners, 668. See *Adjudication, Joint and Separate.*

TRUSTEE. See *Agent*.

TRUSTEE, PROPERTY HELD BY BANKRUPT AS,

- legal interest of bankrupt as mere trustee does not pass, 359.
 - beneficial interest passes, 359.
 - bankrupt having assigned chose in action before bankruptcy may sue in his own name after bankruptcy as trustee, 359.
 - where a bond was assigned by way of mortgage for its full value, *quære*, 359.
 - instances of trust estates not passing, 360.
 - former course of dealing with trust estates where trustee became bankrupt, 360.
 - Lord Chancellor may order conveyance or assignment to another trustee, 360.
 - jurisdiction is in court of chancery, 361.
 - if bankrupt is bare trustee, assignees are not ordered to join in conveyance, 361.
 - surviving trustee bankrupt, and not having surrendered, assignees ordered to transfer to new trustees, 361.
 - bankrupt trustee not having surrendered, court refused to appoint another in his place as "having refused or become incapable," but petition not intituled in the Act of 1849.. 361.
 - court will not decide on such application who are or are not entitled as cestuis que trust, 361, 362.
 - it is "of course to" appoint new trustee at the request of the cestui que trust, 362.
 - all parties must join or be served, 362.
 - trust funds under a will vested in a bankrupt executor of a trustee, debts being all paid and trust for a long time administered according to the will, new trustee was appointed without any personal representative of testator being before the court, 362.
 - formerly reference to approve of trustees, 362.
 - more usual not to suggest them at once, 362.
 - court will appoint, though bankrupt had not possession of trust estate, 362, 363.
 - where sole cestui que trust, court will order transfer directly to him, if he desire it, 363.
 - where trust estate is a mortgage, mortgagor should be consenting party, 363.
 - court has ordered fund to be transferred into court of chancery and exercised its ordinary jurisdiction, though not given by statute, 363.
 - court may appoint two new trustees though one only be bankrupt, 363.
 - in practice, petition should be intituled in Trustee Act, 1850, as well as Bankrupt Act, 363.
 - original number of trustees ought to be preserved, 363.
 - assignees should in general be served, 364.
 - bankrupt entitled to costs of appearance, 364.
 - in general out of trust fund, 364.
 - trustee, proof of debt by, 714.
 - where co-trustee bankrupt, 714.
 - where trustee bankrupt and no solvent co-trustee, 715.
 - proof by, where appointed in lieu of bankrupt trustee and vesting order made, 715.
 - trustee or executor, sole proof by, allowed against his own estate where no cestuis que trust eligible, 716.
- See further as to trustee becoming bankrupt—Bankrupt, 940 et seq.*

TRUSTEES,

- under deeds of arrangement. See *Arrangements with Creditors*.
- court interferes only as ancillary to, in execution of trusts of deeds, 1036.
- may bring actions without leave, 1038.
- may not retain dividend for personal claims against creditor, 1038.
- to give account to creditors as to receipts, &c., 1038.

UNAVOIDABLE ABSENCE,

- of commissioner, registrar, &c., 10, 11, 12, 18, 21, 41.

UNCERTIFICATED BANKRUPT,

- adjudication against, 94, 252 et seq. See *Adjudication*.
- trading with licence of assignees, 254.

UNCLAIMED DIVIDENDS,

- assignees cannot set up Statute of Limitations as to, 889.

UNCLAIMED DIVIDEND ACCOUNT, 37.

balance due to treasury, for land and buildings, paid out of, 74.

UNREASONABLE CONDITIONS, 1013 et seq., 1059. See *Arrangements with Creditors*.**UNREGISTERED BILLS OF SALE,**

bills of sale void unless duly registered, 425.

statute does not confirm any bill of sale which would have been invalid in any respect, 426.

does not avoid order and disposition clause, 426.

conveyance of fixtures with land not within it, 426.

otherwise if fixtures conveyed apart from title to land, 426.

bill of sale must itself pass, or witness the passing of property in goods, 426.

if possession not retained, no need of registration, 426, 427.

marriage settlements, if antenuptial, excepted, 427.

assignments for benefit of creditors or in the way of business excepted, 427.

USHER,

vacancy in office of, not to be filled without leave of Lord Chancellor, 43.

disqualified from parochial office, 46.

VACANCY IN OFFICE OF COMMISSIONER. See *Commissioner*.

of registrar and other officers. See *under respective titles, Registrar, &c.*

of insolvent court clerks and officers. See *Insolvent Debtors Court*.

VESTING OF ASSETS IN ASSIGNEES,

personal estate of bankrupt vests in assignees by their appointment, 246.

also real estate other than copyholds, &c., 246.

old law on subject, 246.

vesting now is by the appointment of assignees, 246, 247.

relation of their title to act of bankruptcy, 247.

cases illustrating doctrine of relation, 247 et seq.

Bucker v. Booth canvassed, 248.

further cases in illustration, 248 et seq.

Coles v. Wright canvassed, 249.

fractional parts of day reckoned, 250.

relation not carried behind accruer of petitioning creditor's debt, 250.

relation of adjudication on debtor's petition only to declaration of insolvency formerly, 226, 250.

Ex parte Philpott and *Ex parte Bainbridge* canvassed, 251.

if creditor have obtained adjudication, act of bankruptcy earlier than declaration of insolvency may be impeached as act of bankruptcy, 251.

and on debtor's adjudication, conveyance might be impeached as a fraudulent preference, 251.

assignment to be valid against assignees should be perfect before commission of act of bankruptcy, 251.

VEXATIOUS DEFENCE OF ACTION,

formerly ground to refuse certificate, 957.

VOLUNTARY CONVEYANCE,

by bankrupt when insolvent, avoidable, 437, 438.

conveyance means transfer by means of legal instrument, 438.

mortgage to secure debt from son to father, not voluntary, 438.

stock is within enactment (sect. 126, Act of 1849), 438.

voluntary settlement on wife so too, 438.

payment in discharge of mortgage on wife's property for her benefit, voidable, 438, 439.

second marriage in England, after first in Scotland, though celebrated on a doubt of the validity of the first, not a consideration, 439. See *Fraudulent Conveyance*.

WAGES, PROOF FOR,

wages or salary of servant or clerk for not more than three months, or 30*l.*, payable in full, 548, 549.

balance due may be proved, 549.

labourer's wages up to 2*l.* payable in full, balance provable, 549.

WAGES, PROOF FOR—continued.

enactments not confined to trade clerks, 549.

nor to yearly servants, but the hiring must be continuous, 549.

commercial traveller, mate and seaman within clauses, 549, 550.

services must have been exclusively due to bankrupt, 550.

editor of newspaper, 550.

clerk or servant must be paid by salary, not commission, 550.

clerk discharged before bankruptcy entitled, 550.

not if he discharged himself, 550.

"months" mean calendar months, 550.

person lending money on agreement that lender should act as clerk, and if he pleased enter into partnership, entitled, 550, 551.

salary for full time allowed, though trading had continued but two months, 551.

contract of hiring must have been with bankrupt, 551.

if entitled to payment for wages, &c. actually earned, entitled also to allowance in lieu of notice to quit, 551.

bankruptcy no rescission of contract of hiring, 551.

order of discharge no release as to wages accrued after adjudication, 551.

WARRANT,

seizure by, in England, 46.

in Ireland, 46, 47.

in Scotland, 47.

search, 47, 484, 485.

in executing seizure by, lien of holder should be discharged, 47, 48.

form of, 54.

of attorney. See *Fraudulent Warrants of Attorney*.

of committal. See *Committal to Prison*.

if bankrupt keep out of the way, court may issue, 486. See *Assets, Discovery, &c. of*.

may issue for disobedience to summons, 487. See *Assets, Discovery, &c. of*.

to bring up bankrupt to surrender, 487. See *Assets, Discovery, &c. of*.

messenger or officer acting under, cannot be sued, 507.

WIFE. See Property in Right of Wife.

of bankrupt may be summoned and examined as to assets, &c., 491, 494. See *Assets, Discovery, &c. of*.

and may be required to sign declaration in Schedule E., 495.

proof by, as to separate estate, 717.

proof by, having obtained protection order under Divorce Act, 717.

to be joined with assignees in suing for property, her chose in action, *dum sola*, 864.

"WOUND-UP IN BANKRUPTCY,"

whether expression comprises arrangements with creditors, *quære*, 676.

LONDON :

PRINTED BY C. ROWORTH AND SONS,
BELL YARD, TEMPLE BAR.



Griffith, William D. / Holmes, Charles Arbothnot / Archbold, John
Frederick,

The law and practice in bankruptcy with an appendix of statutes, orders
and forms ; in two volumes

Bd.: 2

London 1867

J.rel. 189-2

urn:nbn:de:bvb:12-bsb10563560-5